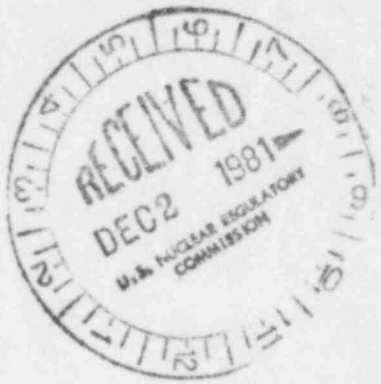
December 1, 1981



Robert Fabrikant, Esq.
Acting Chief Energy Section
Antitrust Division
U.S. Department of Justice
P. O. Box 14141
Washington, D.C. 20044

Re: In the Matter of Illinois Power Company, et al., Clinton Nuclear Power Station, Unit 1, NRC Docket No. 50-461A

Dear Mr. Fabrikant:

Pursuant to Section 105(c)(2) of the Atomic Energy Act, as amended and the Commissions Rules thereunder, I am enclosing for your review and comment a draft "Operating License Antitrust Review Finding of No Significant Change" for the captioned nuclear unit. This document was prepared by the Antitrust and Economic Analysis Branch of the Office of Nuclear Reactor Regulation.

If you have any questions concerning this document or the nuclear facility in question, please give me a call.

Sincerely,

Benjamin H. Vogler
Deputy Antitrust Counsel

Enclosure: As stated

DISTRIBUTION:

NRC Docket	Chron.
LPDR	AToalston
PDR	
FF(2)	
Shapar/Engelhardt	
Christenbury/Scinto	
Olmstead	
Rutberg	
Vogler	

BHVogler

DS06

OFFICE	Chandler	OELD	OELD				
SURNAME		BVogler:am	JRutberg	8112030287 811201 PDR ADOCK 05000461 M PDR			
DATE		12/ 1 /81	12/ 1 /81				

CLINTON NUCLEAR POWER STATION, UNIT 1

ILLINOIS POWER COMPANY, SOYLAND POWER COOPERATIVE, INC. AND

WESTERN ILLINOIS POWER COOPERATIVE, INC.

DOCKET NO. 50-461

FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

INDEX

I. Introduction

Unlike the procedure established for review of construction permits, prospective operating licensees are not required to undergo formal antitrust reviews unless the NRC staff[1] has made the determination that there have been "significant changes" in the licensee's activities or proposed activities subsequent to the review by the Attorney General and the Commission at the construction permit (CP) stage.[2]

The Commission in its recent Summer[3] decision has provided the staff with a set of criteria to be used in making the significant change determination for prospective operating license (OL) applicants.

> "The statute contemplates that the change or changes, (1) have occurred since the previous antitrust review of the licensee(s); (2) are reasonably attributable to the licensee(s); and (3) have antitrust implications that would most likely warrant some Commission remedy."[4]

To warrant an affirmative significant change finding, i.e., triggering a formal OL antitrust review, the particular change(s) must meet all three of these criteria.

Staff has documented two groupings of "changes" in its analysis of the Clinton OL application that warrant analysis under Summer: 1) those resulting from the

---

[1]This responsibility was officially delegated to the Director of Nuclear Reactor Regulation in a memorandum dated September 12, 1979 from Chairman Hendrie to the Directors of NRR and NMSS.

[2]Section 105c(2) of the Atomic Energy Act of 1954, as amended.

[3]Virgil C. Summer Nuclear Station, No. 1, Docket No. 50-395A, dated June 30, 1980.

[4]Summer, p. 7

applicant's CP license conditions; and 2) those not directly resultant from the CP license conditions. Staff has found no change in either group that meets all three Summer criteria and consequently is not recommending a formal OL antitrust review.

To put these changes in prospective, it is helpful to first review the structure of the market pertinent to this review and the basis or benchmark from which change is measured.

II. Structure of the Electric Power Industry in Illinois

The electric power industry in Illinois can be segmented into two portions, that integral to the City of Chicago and its surrounding area, and the remainder of the state.

The Chicago area is serviced by one of the largest domestic electric power companies, Commonwealth Edison Company. The remainder of the state (i.e., from the north central portion, to the southern tip of the state) is serviced by a group of power companies including municipal, cooperative and private power companies.

The relevant marketing area for the Clinton Nuclear Power Station focuses on the central and southern portions of the State of Illinois, i.e., the area in which the incidence of any anticompetitive practices associated with the activities of the Clinton Applicants will have the greatest impact. This is the area in which the three applicants serve and the area where the use of the power and energy generated by the Clinton nuclear plant will be most concentrated.

A. Investor-Owned Utility Systems (IOU)

1. Illinois Power Company (Illinois Power)

Illinois Power, the company responsible for constructing and operating the Clinton plant, is the largest electric utility system in the relevant marketing

area, in terms of owned or controlled generating capacity, high voltage transmission facilities and electric load served. In 1979, Illinois Power had 3,749 Mw of generating capacity; 2,448 miles of transmission lines 69 kv or higher; and a (summer) peak load of 3,019 Mw.

Illinois Power's service area is concentrated in the central and southern portions of the state, where roughly 80% of its revenues are generated--the remainder of the Company's operating revenues comes from properties located in the northern portion of the state. The three geographic service areas are non-contiguous, however they are all linked by company-owned high voltage transmission lines as well as with interconnections to other power companies in the area. (See map of Illinois Power's service area, included as Appendix A.)

Illinois Power's operating revenues for 1979 amounted to $752 million (approximately 65 percent from electric operations and 35 percent from gas facility operations), with net income of $91 million.

2. Central Illinois Public Service Company (Central Illinois)

Outside of the Chicago area, in the lower two-thirds of the State, Central Illinois is the second largest IOU following closely behind Illinois Power in generating and transmission facilities owned and electric load served. In 1979 Central Illinois owned or controlled 2,581 Mw of generating capacity; 3,581 miles of transmission line 69 kv or higher; and had a summer peak load of 1,818 Mw. Central Illinois had operating revenues of $448 million for 1979 and net income of $67 million.

Central Illinois and Illinois Power are the principal producers of electric power and energy in the southern two-thirds of the state. Each system is fully integrated and the two systems are also interconnected extensively by high voltage and extra high voltage transmission ties.

3. Central Illinois Light Company (Central Illinois Light)

Central Illinois Light's service area is primarily in the central portion of the state centering around the cities of Peoria and Springfield, Illinois. Although the Company is one of the smaller IOUs in the state, it has interconnections with Central Illinois Public Service, Commonwealth Edison, Illinois Power and the City of Springfield electric system to provide for interchange of electric energy on an emergency and mutual help basis.

In 1979 Central Illinois Light had generating capacity of 1,501 Mw, 339 miles of transmission line 69 kv or higher and a summer peak load of 1,055 Mw. The Company's 1979 operating revenues amounted to $364 million with a net income of $53 million.

4. Electric Energy, Inc.

The Company was incorporated in Illinois in 1950 by four private utility companies[6] to supply a specified amount of firm power to an Atomic Energy Commission project near Paducah, Kentucky.

Electric Energy Inc. is interconnected with the four sponsoring companies and with the Tennessee Valley Authority (TVA). Electric Energy, Inc. does not represent an integral competitive system in the area primarily because all power in excess to that supplied to the Federal installation in Paducah is contracted to each of the sponsoring companies in amounts equal to their ownership shares.

In 1979 Electric Energy, Inc. had generating capacity of 1,100 Mw, and 55 miles of transmission lines above 69 Kv. Of the total generating capacity available, 735 Mw has been contracted to the government facility through December 31, 1989. Operating revenues amounted to $124 million with $3 million net income for 1979.

[6]The sponsoring companies are: Central Illinois Public Service Company, 20% ownership; Illinois Power Company, 20% ownership; Kentucky Utilities Company, 20% ownership and Union Electric Company, 40% ownership.

Of the 12 investor-owned utilities doing business in Illinois, those mentioned above represent the largest in terms of load served and the most relevant for purposes of assessing competition in the electric power industry in the state outside of the Chicago area.[7]

B. Municipal Electric Systems

Twenty-Three of the thirty-eight municipally owned electric systems in the state possess some degree of self-generation.[8] Of these twenty-three systems, the largest is that owned and operated by the City of Springfield, Illinois with 530 Mw of capacity in 1979. Most of the remaining generating municipals are very small and typically supply only portions of their loads, purchasing the remainder from other suppliers -- usually the larger IOU's throughout the State. (This is typical of the structural format for the industry nationwide, with the larger private investor-owned companies supplying varying amounts of partial requirement service to the smaller self-generating utilities and full requirements service to those municipals or cooperatives with no generation. There are however, pockets throughout the industry where very large municipal or government systems, e.g., in the City of Los Angeles or the TVA throughout the State of Tennessee respectively, where the private systems do not represent the predominant source of power and energy, but these areas represent exceptions to the norm.) None of the municipal systems in Illinois is a co-owner of the Clinton nuclear plant, however, many of the systems have benefited from the license conditions attached to the Clinton construction permit. See section entitled, "Changes Since the Construction Permit Review."

[7]The other IOU's operating within the state are: Cedar Point Light and Water Company, Mt. Carmel Public Utility Company, Sherrard Power System, South Beloit Water, Gas and Electric Company, Interstate Power Company, Union Electric Company and Iowa-Illinois Gas and Electric Company. (Though most of Electric Energy, Inc.'s load is outside of the state much of the excess capacity produced by the Company goes to members operating in the relevant area.)

[8]See Appendix B for a listing of all municipal generating systems located in the State of Illinois.

C. Cooperative Power Systems (Coops)

There are thirty rural electric coops in the state of Illinois, two of which are co-owners of the Clinton nuclear plant, i.e, Soyland Power Cooperative, Inc. (Soyland) and Western Illinois Power Cooperative, Inc. (WIPCO). The majority of the coops are distribution coops and have no generation or transmission facilities of their own. They are characteristically supplied by the private IOU's or larger generation and transmission (G&T) coops serving in the area.

Presently, there are two G&T coops in the state, WIPCO and the Southern Illinois Power Cooperative (SIPCO). SIPCO had generating capacity of 280 Mw in 1979 with 100 miles of transmission line supplying its three distribution cooperatives at wholesale. In 1979 WIPCO had generating capacity of 57 Mw and 545 miles of transmission line.

Soyland is an organization (which presently has no generation or transmission facilities) set up to acquire a 10.5% interest in Clinton Unit 1. It is comprised of fifteen member distribution coops[9] located in the central and southern portions of the State of Illinois -- essentially, the non-Chicago area of the State. Once Soyland Power Coop (Soyland) begins taking Clinton nuclear power, it too will function as a G&T coop supplying its member systems with wholesale bulk power.

III. The Construction Permit Antitrust Review

In order to make a "significant change" determination it is necessary to have some benchmark from which to measure "change." A brief resume of the results of the CP review should provide an adequate framework in which change can be measured.

[9]See Appendix C for names and addresses of Soyland members, and Appendix D for names and addresses of WIPCO members.

Illinois Power Company, the principal applicant and operator of the Clinton Plant, applied for a construction permit to build its first nuclear power plant in 1973. Like all other non-grandfathered nuclear applicants (those applicants seeking CPs or OLs after the 1970 amendment), Illinois Power had to undergo an antitrust review at the CP stage to insure that its activities in connection with the construction of the plant did not "create or maintain a situation inconsistent with the antitrust laws" -- as prescribed by Sec. 105c of the amended Atomic Energy Act of 1954.

During the review process, the staff's of the Department of Justice (DOJ) and the AEC/NRC became aware of certain allegations of misconduct by Illinois Power in conjunction with its dealings with cooperative and municipal power systems in or adjacent to Illinois Power's service area. These concerns were addressed by the Department in a letter to the AEC requesting additional information from the Applicant:

> "Among the alleged matters with possible antitrust implications which the Department [of Justice] seeks to clarify by means of the requested documents are: refusals of the Applicant to interconnect with other electric utilities on reasonable terms; efforts to preclude development of alternative bulk power supply sources by others; acquisitions of other electric utilities; refusals to wheel power for small systems; allocation of territories and restrictions on end use of purchased power."[10]

After submitting additional clarifying data in response to DOJ's document request and after the anticompetitive concerns were aired, the Applicant agreed to a set of policy commitments that were attached as license conditions to its construction permit for Units 1 and 2 of the Clinton nuclear plant.

---

[10] Letter dated January 24, 1974 from Thomas Kauper, Assistant Attorney General, (signed by Joseph Saunders) to Howard Shapar, Assistant General Counsel, AEC.

Generally, the policy commitments addressed the following areas:[11]

a. Illinois Power (Company) will interconnect with any neighboring entity and will assist in coordination of reserves and the sale of emergency and maintenance power to interconnected entitites;

b. Interchange arrangements between the Company and neighboring entities will not include restrictive provisions which would preclude a party from engaging in interconnection and coordination arrangements with others;

c. Interconnectons will be available for a neighboring electric system on any of the Company's installed transmission and subtransmission facilities;

d. The Company will afford an opportunity to participate to any neighboring electric system that makes a timely request therefor in the ownership (or unit power purchase) of the Clinton nuclear plant or any other nuclear plant owned by the Company which is scheduled for commercial operation prior to January 1, 1989;

e. The Company will sell bulk power to any neighboring electric system with no restriction upon use or resale;

f. The Company will wheel power over its transmission facilities; and,

g. The Company will include in its planning and construction programs sufficient transmission capacity to provide for the wheeling requirements of neighboring electric systems.

Subsequent to Illinois Power agreeing to the antitrust policy commitments listed above, the Department of Justice issued its CP advice to the Commission by letter dated April 29, 1974. The letter concluded as follows:

[11] See Appendix E for complete listing of all of the antitrust conditions attached to the Clinton construction permit.

"In our opinion, these policy commitments should provide competitors of Applicant with competitive alternative sources of bulk power supply and substantially eliminate the grounds on which complaints made to the Department by smaller systems were based. On the strength of these policy commitments, and with the expectation that the Commission will include them as conditions to the license, we conclude that an antitrust hearing will not be necessary with respect to the instant application."[12]

The Attorney General's advice letter was published in the Federal Register in May of 1974. Since no petitions to intervene were received, the CP antitrust review effectively ended with the publication of the Attorney General's advice letter, although the construction permit was not issued until February of 1976.

IV. Changes Since the Construction Permit Review

The Commission's Regulatory Guide 9.3 for OL applicants requests data pertaining to changed activities since the CP antitrust review:

"This regulatory Guide identifies the type of information that the Regulatory staff considers germane for a decision as to whether a second antitrust review is required at the operating license stage."

By letter of May 23, 1980 the principal applicant, Illinois Power Company, submitted on behalf of itself and as agent for the co-owners, Soyland Power Coop. and Western Illinois Power Coop., responses to the Commission's 9.3 data request.

From staff's review of the 9.3 data response and analysis of various public information sources, two distinct types of "changes" since the CP review

[12]Appendix E, DOJ "advice" letter dated April 29, 1974, pp. 4-5.

have been isolated: 1) changes resultant from implementation of CP license conditions; and 2) changes not directly related to the CP license conditions.

A. Changes Resulting from License Conditions

Many of the changed activities which have occurred in the Illinois electric power industry since the CP antitrust review have resulted from extensive negotiations between the larger IOU's, the smaller municipal and cooperative systems and various governmental agencies concerning various forms of coordination and power supply.[13] The fruits of these negotiations have been realized by many of the smaller systems in the area. For example:

1) Several municipal generating systems have obtained interconnection agreements with Illinois Power Company, agreements that were similar to those Illinois Power already had with its neighboring investor-owned electric systems. Although the interconnection agreements were implemented after the CP review terminated in 1974, they were directly related to requirements imposed by license conditions negotiated during the CP antitrust review;

2) The same municipals which sought interconnection agreements from Illinois Power have recently opted to take partial requirement wholesale service rather than taking service under the provisions of the previously negotiated interconnection agreements. This represents a new option for these systems;

3) Illinois Power entered into an interconnection agreement with the electric system operated by the City of Springfield, Illinois;

4) Two smaller power companies, Soyland and Western Illinois Power Coops, have purchased ownership shares of the Clinton Nuclear Plant, thereby sharing in the benefits of a large, fuel efficient baseload power plant.

[13] Illinois Power is also currently involved in several rate proceedings with various Illinois municipals before the FERC. These issues were current during the CP review and consequently do not involve changes since that review. For a brief description of these proceedings, see Appendix F.

5) The City of Waterloo, Illinois opted for a partial requirement wholesale power agreement rather than agreeing to an offer of purchase (of its electric system) by Illinois Power;

6) Illinois Power received interconnection requests from the Villages of Flora and Chatam, Illinois and from the Farmer City, Illinois electric system;

7) The City of Springfield, Illinois has approached WIPCO regarding possible participation in a joint generating plant; and,

8) As a result of WIPCO's 138 kv tie with Illinois Power in 1978, the Coop became a member of NAPSIC (North American Power Systems Interconnection Committee) a data gathering organization formed to ensure acceptable levels of operation and reliability of its members.

Although the above changes have occurred subsequent to the CP antitrust review, they were anticipated during that review as reflected in the CP license conditions. Thus, in so far as the changes are consistent with those license conditions, they do not connote changes in the "proposed activities" of the Applicant. Consequently, staff needs only to assure itself that these changes are indeed consistent with the license conditions.

As discussed earlier, the license conditions attached to the Clinton construction permit were structured to remedy certain allegations of anticompetitive conduct by Illinois Power. Generally, the license conditions were designed to increase the alternatives and opportunities of smaller systems in central and southern Illinois in their quest in seeking and obtaining sources of power supply, and specifically to facilitate both the sharing of nuclear power and the ancillary functions of power supply that make baseload nuclear desirable. By increasing coordination between the various industry participants (notably the large and small systems), the newly acquired competitive alternatives listed above, have become significant (beneficial) determinants in the planning processes of smaller power systems in central and southern Illinois. Moreover, the implementation of the license conditions has had positive performance effects

on the availability of bulk power supply in central and southern Illinois, and should any antitrust significance be attributed to these activities, it would be constructive, i.e., not requiring any remedial action by the Commission.

B. Changes Not Resulting from License Conditions

There have been changes in the electric power industry in central and southern Illinois not directly attributable to the Clinton CP license conditions. These changed activities, documented by the 9.3 response, have not detrimentally affected the competitive process among electric power systems in the relevant marketing area. Moreover, these changed activities have had no negative antitrust implications that would trigger a "significant change determination" as interpreted by the Commission in Summer. The changes are as follows:

1) The addition of new members to the Mid-American Interpool Network (MAIN):

   a) The Municipal Electric Utilities of Wisconsin,

   b) Soyland Power Cooperative, Inc., and

   c) Western Illinois Power Cooperative, Inc.

   Normally, the addition of new members to operating power pools directly increases the coordination and cooperation among power systems in common or adjacent marketing areas. Even though the MAIN pool is basically a regional planning organization with little or no control over the operating practices of its members, the addition of the three new systems will enable them to participate in periodic planning sessions among regional systems and generally become more familiar with new generation and transmission planned for the area. The admission of these new members to MAIN is a change since the CP review, however, this change is procompetitive and consequently does not satisfy the remaining two Summer criteria, i.e., attributable to the applicant and having negative antitrust implications;

2) Joint planning among Soyland Power Coop., Western Illinois Power Coop. and Southern Illinois Power Coop.:

These three G&T cooperatives (Soyland will become a G&T once it begins to receive Clinton power) have joined together to disucss the possibility of constructing various size coal-fired generating plants in the late 1980s. Soyland has already contracted with the Peabody Coal Company for a one billion dollar, thirty year supply of coal for its plant to be built in Pike County, Illinois in the late 1980s.[14]

This type of joint planning and development is indicative of competitive forces at work within the bulk power market. By joining forces, these relatively small power suppliers are able to build a generating plant that will provide the benefits of large baseload power normally reserved for the large IOUs in the industry. The increase in coordination, and cooperation among these firms has provided more meaningful competition between the large and the not so large power generating systems in central and southern Illinois. Only the first Summer criterion is met by this change, i.e., the planning has occurred since the CP review. The joint planning is not attributable to the applicant nor does it carry any negative antitrust implications that would likely be remedied by the Commission.

3) Illinois Power's new retail rate structure was redesigned to encourage off-peak usage on its system. Many systems throughout the country have instituted this retail rate structure in an attempt to ward off or delay construction of costly new generating plants and to level their system loads throughout the year. The Commission has no jurisdiction over retail rate structure and would not likely impose any remedy if a dispute over retail rates ever arose. (Certain rate conflicts may fall within the purview of the Commission, e.g., when a wholesale rate and a retail rate are manipulated by an applicant to impose a "squeeze" on customers, however, this is not the case with the change instituted by Illinois Power);

[14]See the April 10, 1981 issue of the Wall Street Journal.

4) Illinois Power has made offers to acquire three electric power systems since the completion of the CP review: the City of Waterloo, the Village of Ladd and the private system supplying the City of Mt. Carmel (all Illinois systems). In view of Illinois Power's history of acquiring smaller electric systems in its area, it is important to fully consider these proposals, particularly in the context of the third Summer criterion, i.e., negative antitrust implications.

Prior to the institution of the CP license conditions, Illinois Power's prospective acquisition partners did not have the option of purchasing partial requirements power and thereby remaining more viable, independent power entities while at the same time meeting the future needs of their customers. The Clinton license conditions provided the smaller systems in the relevant marketing area with an alternative to acquisition. The municipal systems located in central and southern Illinois can now conduct feasibility studies and determine if they can provide efficient and reliable service to their customers with various forms of support available from Illinois Power Co., without being acquired by Illinois Power. (Support Illinois Power has offered other interconnected systems in its area for years.) However, if these studies indicate that remaining in the electric power industry is no longer feasible for the municipal, they may then choose to sell out to Illinois Power.

The systems serving Mt. Carmel and the Village of Ladd are very small and the City of Waterloo has exercised its recently obtained option and requested a partial requirement service agreement from Illinois Power, in lieu of being acquired, under the negotiated "Agreement for Purchase of Power," dated May 1, 1979. In this light,

Illinois Power's recent overtures to purchase the electric facilities in Ladd, Waterloo and Mt. Carmel do meet the first two Summer criteria -- the activity has occurred since the CP review and is attributable to the Applicant -- however, the proposed acquisitions do not appear to detrimentally affect the competitive process in central and southern Illinois -- thereby failing to meet the third Summer criterion dealing with significant antitrust implications capable of being remedied by the Commission. Consequently, these overtures of acquisition do not invoke a significant change determination; and lastly,

5) A group of time-related changes has been documented since the CP antitrust review. This grouping of changed activity is characterized by variations in system load and individual growth patterns and is largely dependent upon economic conditions within the service area of each individual system. These changes are as follows:

a) Western Illinois Power Coop (WIPCO) has planned to add new generating capacity to its system by adding a new 100 Mw coal plant in 1988;

b) WIPCO reduced the size of a newly planned turbine plant from 75 Mw to 72 Mw and slipped the planned on line date from 1985 to 1986;

c) WIPCO's projected annual load factor for 1979 was projected in 1973 at 53, however, the actual load factor for the system for 1979 was 50.9;

d) WIPCO's peak load increased from 42 Mw in 1978 to approximately 45 Mw in 1979;

e) Illinois Power's peak load and generating capability have changed since 1976. Net generating capability increased from approximately 3,400 Mw in 1976 to approximately 3,800 Mw in 1980, while peak load increased from 2,570 Mw to 3,150 Mw over the same period; and,

f) Soyland Power Cooperative has announced plans to construct a baseload coal-fired plant in Pike County, Illinois to go on line in the late 1980s.

The above changes meet the first two Summer criteria but not the third, i.e., the changes have occurred since the CP review and are attributable to the Applicant(s), however, none of the changes has negative antitrust implications and would not require Commission remedy.

In sum: within the two groups of changes, those related and those unrelated to CP license conditions, staff has not identified any instances that satisfy all three of the Summer criteria. Consequently, it is the staff's opinion that no affirmative significant change determination be made pursuant to Applicants' application for an OL for the Clinton nuclear plant.

V. Summary and Conclusion

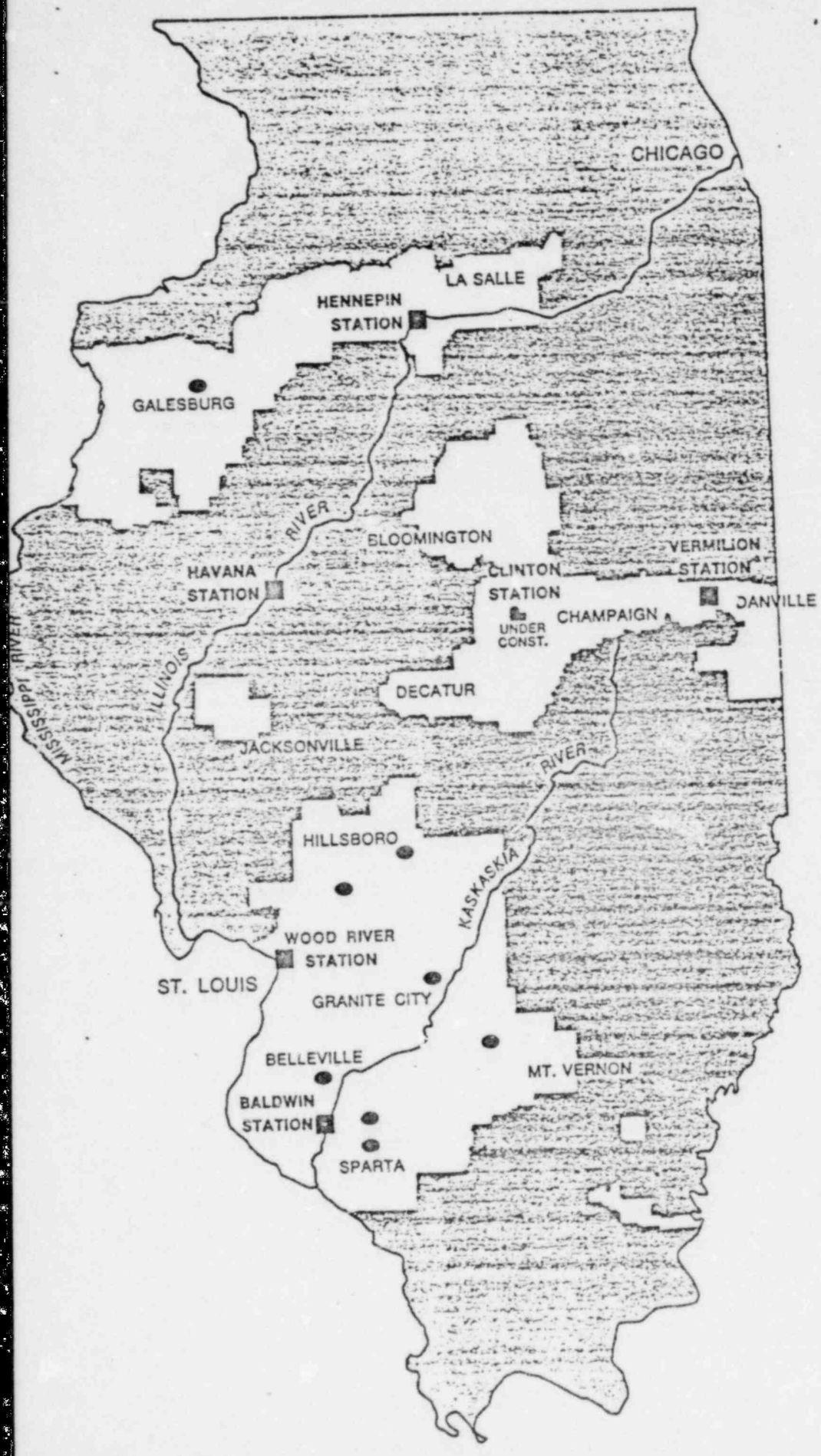
The principal applicant, Illinois Power Company, represents the largest power system in the relevant marketing area. Additions of large baseload power plants and increases in accompanying transmission facilities generally tend to increase the oversight or planning role of the larger systems in a particular marketing area, i.e., usually enhancing any existing market power of the system.

By subjecting all nuclear applicants to an antitrust review at the CP stage, the NRC via its Section 105c charge, prevents the economies associated with large baseload nuclear plants from being captured by only the largest power systems throughout the country, thereby thwarting increases in existing market power. During the Clinton CP antitrust review, it became apparent that Illinois Power had been less than cooperative with smaller power systems in its service area and adjacent areas. Consequently, a set of antitrust license conditions was attached to the Clinton construction permit which was designed to implement greater coordination between Illinois Power and smaller municipal and cooperative systems in the relevant area - thereby furthering the competitive process among these same power systems. The economies associated with the Clinton nuclear plant and those linked to Illinois Power's integrated network of power supply were subsequently made available to smaller systems in the area.

Staff has identified a number of changes that, (1) have occurred since the construction permit antitrust review, and (2) are reasonably attributable to the licensee(s). However, many of these changes are in conformance with the construction permit antitrust license conditions and have had positive performance effects on the availability of bulk power supply and on competition in the area generally. Other changes which have occurred, have not had significant negative antitrust implications that would likely warrant a Commission remedy, and therefore do not warrant a significant change finding.

Based upon the successful implementation of CP license conditions and the lack of any detrimental conduct or activity (to the competitive process in central and southern Illinois) on the part of Illinois Power Company, Soyland Power Cooperative or Western Illinois Power Cooperative, staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Clinton Nuclear Power Station.

APPENDIX A: ILLINOIS POWER CO. SERVICE AREA MAP



Appendix B - Municipal Generators in Illinois*

Altamont Municipal Electric Light Plant
Batavia Municipal Electric System
Breese Water and Light Department
Bushnell Municipal Electric Light and Power Utility
Carlyle Municipal Utilities
Carmi Water and Light Department
Fairfield Municipal Electric Department
Farmer City Electric System
Freeburg Municipal Light Plant
Geneseo Municipal Utilities
Highland Electric Light Department
Marshall Water and Light Department
Mascoutah Municipal Light Department
McLeansboro Municipal Light and Water Plant
Peru Municipal Electric
Princeton Municipal Utilities Department
Rantoul Light and Power Department
Red Bud Municipal Power Plant
Rochelle Municipal Utilities
Springfield Water, Light and Power Department
Sullivan Electric Department
Waterloo Light and Power
Winnetka Electric Department

*Source: Electrical World Directory of Electric Utilities, 1979-80, 8th Edition.

APPENDIX C

SOYLAND POWER COOPERATIVE, INC.

Cooperative Members

Name	Address
Clay Electric Co-operative, Inc.	P. O. Box 517 Flora, Illinois 62839
Clinton County Electric Cooperative, Inc.	P. O. Box 40 475 N. Main Street Breese, Illinois 62230
Coles-Moultrie Electric Cooperative, Inc.	P. O. Box 709 East Route 316 and Logan Street Mattoon, Illinois 61938
Corn Belt Electric Cooperative, Inc.	P. O. Box 816 1502 Morrissey Drive Bloomington, Illinois 61701
Eastern Illinois Power Cooperative	P. O. Box 96 330 West Ottawa Street Paxton, Illinois 60957
Edgar Electric Co-operative Association	P. O. Box 190 RFD 6 Paris, Illinois 61944
Farmers Mutual Electric Company	P. O. Box 43 1004 S. Chicago Street Geneseo, Illinois 61254
Illini Electric Cooperative	P. O. Box 637 1605 S. Neil Street Champaign, Illinois 61820
Illinois Valley Electric Cooperative, Inc.	P. O. Box 70 Princeton, Illinois 61356
McDonough Power Cooperative	P. O. Box 352 West Jackson Road Macomb, Illinois 61455
Monroe County Electric Co-operative, Inc.	P. O. Box 128 Illinois Route 3 and Country Club Lane Waterloo, Illinois 62298

Name	Address
Shelby Electric Cooperative	P. O. Box 368 Route 128 and North 6th Street Shelbyville, Illinois 62565
Southwestern Electric Cooperative, Inc.	P. O. Box 409 South Elm Street and Route 40 Greenville, Illinois 62246
Tri-County Electric Cooperative, Inc.	P. O. Drawer 309 3906 N. Broadway Mt. Vernon, Illinois 62864
Wayne-White Counties Electric Cooperative	P. O. Drawer E West Highway Fairfield, Illinois 62837

APPENDIX D

WESTERN ILLINOIS POWER COOPERATIVE, INC.

Cooperative Members

Name	Address
Adams Electrical Co-Operative	P. O. Box 247 Camp Point, Illinois 62320
Illinois Rural Electric Co.	2-12 South Main Street Winchester, Illinois 62694
M.J.M. Electric Cooperative, Inc.	P. O. Box 219 Carlinville, Illinois 62626
Menard Electric Cooperative	P. O. Box 279 Petersburg, Illinois 62675
Rural Electric Convenience Cooperative Co.	P. O. Box 9 Auburn, Illinois 62615
Spoon River Electric Co-operative, Inc.	930 South Fifth Street Canton, Illinois 61520
Western Illinois Electrical Coop.	P. O. Box 338 Carthage, Illinois 62321

Section 427.13 What taxable. All other property, real or personal, is subject to taxation in the manner prescribed, and this section is also intended to embrace:

1. Ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property.

Reading all of the quoted provisions of the Iowa Code in context, it seems clear that the Code in effect gives the City the discretion to permit taxation of a bridge if such bridge is otherwise exempt from taxation, but the Code does not exempt bridges which are held for profit; rather the Code specifically includes as taxable real property all bridges except those municipally owned and not held for profit. I conclude that the taxes paid to Lee County constitute an item that is properly chargeable as a bridge expense.

Although the tax is clearly chargeable as a bridge cost, the amount of the expense should be reduced to the extent that the tax was actually refunded to the City. For it is shown in the City brief that 32.5 percent of the 1972 levy was paid over to the City, thereby constituting an effective refund of that much of the expense. Accordingly, the claimed expense should be reduced in the amount of $14,239.

Other expenses. The claimed expenses include an item of $3,600 which was a contribution to a recreation fund and is clearly not an expense properly chargeable to the bridge. The Federal Highway Administration also criticized an expense item of $6,042 in attorney's fees. The record does not show how much, if any, of said fees were for the nonrecurring expense of prosecuting this case. No other basis is shown for excluding what is otherwise uncontested as an actual expenditure; I conclude that it is properly chargeable as an expense.

The complainants argue generally what is unassailable in theory, i.e., that funds spent for non-bridge purposes cannot be considered as expenses when fixing rates. However, with the exceptions already listed, complainants pointed to no item of the claimed expenses in Exhibit A-1 which constitute such an expenditure for non-bridge purposes. Accordingly, I find that the properly chargeable bridge related costs for the year 1972 were as follows:

Claimed expenses	$282,587
Add: Depreciation expense	13,285
Total	295,872
Less: Refund of Lee County	17,839
Tax paid	14,239
Recreation fund	3,600
Total bridge related costs	278,033

The City introduced an exhibit summarizing its claimed costs during recent years and points out that those costs have been increasing steadily while revenues have remained almost constant. On the basis of this showing, the City argues that in fixing rates for the future, it is not reasonable to consider only past costs and that some consideration should be given to anticipated increases. Accordingly, the City accounting witness projected future costs based upon an assumed continuing of the same rate of increase as has been experienced in the recent past. In my opinion this projection is too speculative to be given effect in definite findings herein.

REASONABLENESS OF TOLLS

The total, reasonable bridge revenue needs of the City for the present are ascertained by adding to the total 1972 costs, $278,033, the return on investment found herein to be reasonable, $116,000. The combined total is $394,033.

As already stated, the total revenues received in 1972, both from highway and from railroad tolls, as well as miscellaneous income, amounted to only $359,947, and that sum was insufficient to provide the return found herein to be reasonable. Accordingly, it must be considered that the present toll structure is not excessive.

Upon all the evidence I find that the assailed rates of toll for the transit of the Mississippi River via the Keokuk bridge have not been shown to be unjust or unreasonable within the meaning of the General Bridge Act of 1906.

[FR Doc.74-10335 Filed 5-3-74;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-412A]

DUQUESNE LIGHT CO., ET AL.

Assignment of Members of Atomic Safety and Licensing Appeal Board

In the matter of Beaver Valley, Unit 2. Notice is hereby given that, in accordance with the authority in 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this anti-trust proceeding:

Alan S. Rosenthal, Chairman
Michael C. Farrar, Member
William C. Parler, Member

Dated: April 30, 1974.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.74-10285 Filed 5-3-74;8:45 am]

[Docket Nos. 50-461A and 50-462A]

ILLINOIS POWER CO.

Receipt of Attorney General's Advice and Time for Filing of Petitions To Intervene on Antitrust Matters

The Commission has received, pursuant to section 105c. of the Atomic Energy Act of 1954, as amended a letter of advice from the Attorney General of the United States, dated April 29, 1974, a copy of which is attached as Attachment 1.

Any person whose interest may be affected by this proceeding may, pursuant to § 2.714 of the Commission's "Rules of Practice," 10 CFR Part 2, file a petition for leave to intervene and request a hearing on the antitrust aspects of the application. Petitions for leave to intervene and requests for hearing shall be filed by June 5, 1974, either (1) by delivery to the AEC Public Document Room at 1717 H Street, NW., Washington, D.C., or (2) by mail or telegram addressed to the Secretary, U.S. Atomic Energy Commission, Washington, D.C., 20545, Attn: Chief, Public Proceedings Branch.

For the Atomic Energy Commission.

ABRAHAM BRAITMAN,
Chief, Office of Antitrust & Indemnity, Directorate of Licensing.

ATTACHMENT 1

APRIL 29, 1974.

Illinois Power Company, Clinton Power Station, Units 1 and 2; AEC Docket Nos. 50-461A and 50-462A; Department of Justice File No. 60-415-67.

You have requested our advice pursuant to the provisions of section 105 of the Atomic Energy Act, as amended, in regard to the above-cited application.

Introduction. This is an application to construct two nuclear electric generating units, each with a nominal rating of 950 megawatts of capacity, to be located at a site in Harp Township, DeWitt County, Illinois. Units 1 and 2 are tentatively scheduled to commence commercial operation in 1980 and 1982, respectively. The units are to be integrated with Applicant's electric bulk power supply system and the power marketed as a portion of its system output.

Applicant. Applicant is the second largest electric utility in the state of Illinois. Its 1972 peak load was 2,127 mw; its generating capacity at that time consisted of 2.4 mw dependable capacity of hydroelectric generating resources and 2,193.6 mw dependable capacity of thermal generating resources.

Applicant's peak load is expected to double in the next 10 years, and it has planned or under construction additional generating capacity to increase its dependable system capacity to 5,756 mw by 1982. Clinton Units 1 and 2 form the major part of this projected increased capacity.

Applicant has high voltage or extra high voltage (ehv) interconnections to a number of major systems adjacent to its service area, including Commonwealth Edison Co., Union Electric Co., Central Illinois Public Service Co. (CIPS), and Central Illinois Light Co. Together with Union Electric Co., and Central Illinois Public Service Co., Applicant participates in the Illinois-Missouri Pool (Ill-Mo). Through Ill-Mo and other interconnection and coordination agreements, Applicant engages in a significant degree of coordinated planning, operation, and development of its bulk power supply system.

Applicant is also a member of the Mid-American Interpool Network (MAIN), a regional reliability council.

Structure of the Bulk Power Market in Illinois. Commonwealth Edison, serving principally in the northern one-third of Illinois, is by far the largest supplier of electricity in the state.[1] With a 1972 peak load of 11,730 mw, Commonwealth Edison is more than five times as large as Applicant, its nearest Illinois competitor.

Applicant and Central Illinois Public Service Co. (peak load 1,394 mw) through a patchwork design of service areas, are the dominant suppliers of electricity, both at wholesale and retail, in the lower two-thirds of Illinois. Each system is fully integrated with high voltage and ehv interconnections with each other and with neighboring systems. The two systems maintain a dominant position in generation and transmission, in their service areas. A smaller privately-owned utility, Central Illinois Light Co. (peak load 791mw), serves in two areas in the central part of the state.

[1] See the Department's Letters of Advice to the Commission concerning Commonwealth Edison's LaSalle County Units 1 and 2, AEC Docket Nos. 50-373A and 50-374A, Department of Justice File No. 60-415-41, December 20, 1972, and Byron Station, Units 1 and 2, Braidwood Station, Units 1 and 2, AEC Docket Nos. 50-454A, 50-455A, 50-456A, and 50-457A, March 4, 1974.

Union Electric Co. (a large Missouri-based utility), Interstate Power Co., Sherrard Power System, and Iowa-Illinois Gas and Electric Co. serve small geographical areas along the western border of Illinois.

Rural electric cooperatives cover all of Illinois geographically but serve mainly in rural areas in the southern three-quarters of the state. Twenty-seven distribution cooperatives and two generation and transmission cooperatives (Western Illinois Power Cooperative and Southern Illinois Power Cooperative) comprise the membership of the Association of Illinois Electric Cooperatives.

Western Illinois Power Cooperative serves several distribution cooperatives in the western-central portion of the state. Its generation is sufficient to supply approximately 20–25 percent of its load. The remainder is purchased at wholesale from Applicant and CIPS in approximate ratios of 40 percent and 60 percent respectively.

Southern Illinois Power Cooperative generates roughly 100 mw from three units. This G&T serves exclusively the three southernmost cooperatives with their entire supply of bulk power.

Other distribution cooperatives purchase bulk power entirely from Applicant, entirely from CIPS, or partially from both.

Illinois contains a number of municipal electric systems, many of which are located in or adjacent to Applicant's service area. Applicant supplies the total bulk power requirements of two such municipal systems, the Oglesby Light and Power Department and the Village of Ladd Electric Department.[1] Several other municipal systems presently operate on an isolated basis, each supplying its total requirements from small generating units.[2]

Results of Antitrust Review. In the course of our antitrust review, certain allegations were received by the Department the general import of which was that Applicant has used its dominant position in generation and transmission in its service area to restrain the competitive opportunities of smaller systems. For its part, Applicant has denied that its policies and practices have been or are inconsistent with the antitrust laws. However, in order to eliminate any questions as to the policies that it intends to follow during the period of the Clinton license, Applicant has formalized its policies and indicated its willingness to have them included as conditions to the license. These policies are set out in the attachment to the letter of Applicant's vice president, dated April 5, 1974, which is attached hereto.

In our opinion, these policy commitments should provide competitors of Applicant with competitive alternative sources of bulk power supply and substantially eliminate the grounds on which complaints made to the Department by smaller systems were based. On the strength of these policy commitments, and with the expectation that the Commission will include them as conditions to the license, we conclude that an antitrust hearing will not be necessary with respect to the instant application.

APRIL 5, 1974.

Illinois Power Company, Clinton Power Station, Units 1 and 2; AEC Docket Nos. 50-461A and 50-462A; Department of Justice File No. 60-415-67.

We set forth as Appendix A to this letter a statement of policy of Illinois Power Company concerning bulk power supply arrangements with neighboring electric systems which it is prepared to make in connection with its Clinton Power Station Units 1 and 2. (The definitions contained in the statement are intended to apply also to the text of this letter.) This commitment is made by the Company with the understanding that the Department of Justice will recommend to the Atomic Energy Commission that an antitrust hearing will not be required in connection with the licensing of the Company's Clinton Power Station Units 1 and 2. On this basis, the Company agrees that its policy statements may be included as conditions to the construction permits and operating licenses to be issued by the Atomic Energy Commission with respect to these units.

The Company believes and maintains that its rate and service policies and practices have been and are consistent with antitrust laws as they may be applied to the Company. The Company understands that certain information has been received by and allegations have been made to the Antitrust Division which may raise certain possible antitrust questions. While the Company is confident that any such questions can be satisfactorily answered, the Company desires to avoid the possibility of having to seek their resolution in an antitrust hearing. It therefore has determined to make the statement of policy and commitment expressed herein.

Paragraph 7 of the statement of policy applies to any additional nuclear generating unit of the Company which, in an application to the Atomic Energy Commission, is scheduled to commence commercial operation prior to January 1, 1980. The Company does not, however, have any present plans for any nuclear generating units in addition to Clinton Power Station Units 1 and 2.

A question has been raised concerning the application of the Company's Service Classification 40 (Wholesale Electric Service for Resale). The Company does not regard a wholesale customer to be limited by that rate as to the areas in which it furnishes electric service or as to the number and location of delivery points for receiving service. If the Company were to receive a request from a neighboring electric system for the purchase of electric service for resale which is not presently a customer of the Company, the Company would sell power to that system either pursuant to Service Classification 40 as it may be amended in the particular circumstances or pursuant to new rate schedules as may be accepted or approved by the Federal Power Commission and any other regulatory authority having jurisdiction.

APPENDIX A

ILLINOIS POWER COMPANY

Statement of Policy Concerning Bulk Power Supply Arrangements with Neighboring Electric Systems in Connection with Clinton Power Station Units 1 and 2

APRIL 5, 1974.

1(a). "Company" means Illinois Power Company and includes each present or future wholly-owned subsidiary of the Company and any successor to it.

1(b). "Costs" means all operating and maintenance expenses, capital costs and a reasonable return on investment which are properly applicable to the particular transaction and the facilities involved in that transaction.

1(c). "Neighboring electric system" means (i) a financially responsible business corporation, not-for-profit corporation, rural electric cooperative, municipal corporation organized under the laws of the State of Illinois, company, association, joint stock company, firm, partnership, or person owning or operating, or proposing bona fidely and in good faith to own or operate, facilities for the generation, transmission or distribution of electricity for bulk power supply, (ii) whose facilities are or will be located in the State of Illinois, (iii) whose facilities are interconnected, or are proposed to be interconnected, for the purpose of carrying out one or more of the transactions referred to herein with facilities of the Company (provided that any proposed interconnection shall be lawful and feasible), and (iv) which is or will be a public utility under the laws of the State of Illinois or the Federal Power Act and is or will be providing electric service under a contract or rate schedule on file with and subject to the regulation of the Illinois Commerce Commission or the Federal Power Commission. The requirement that a neighboring electric system shall be a public utility does not apply to a rural electric cooperative or a municipal corporation but will apply to a rural electric cooperative or a municipal corporation if at a future date it is included within the definition of "public utility" under the Illinois Public Utilities Act or under a similar act. (The definition of neighboring electric system includes systems which meet the above requirements either now or in the future.)

1(d). "Neighboring entity" means a neighboring electric system owning or operating, or proposing bona fidely and in good faith to own or operate, facilities for the generation of electricity for bulk power supply.

2. The broad purposes of any interchange or other arrangement for bulk power supply transactions between the Company and a neighboring electric system are to improve the reliability and quality of service, to avoid the duplication of facilities, and to minimize costs. Any such arrangement will involve planning by the parties and should be technically and economically feasible and practical. The arrangement should also be reciprocal as nearly as may be although it is recognized that, in any particular arrangement, the benefits may not be equal or identical for each party and that a smaller electric system may realize benefits which are greater than those realized by a larger system. No party should be obligated to enter into an arrangement if it would realize no net benefits from the arrangement, or if the arrangement would result in net burdens to the party. The policies herein expressed cannot be implemented unilaterally by the Company. If an arrangement between the Company and a neighboring electric system is to be successful and is to operate in the public interest, it must be negotiated and performed in good faith and with full cooperation of the parties to it. No party should capriciously reject a proposal submitted by another party and the Company and neighboring electric systems should give reasonable consideration to proposals made by each other.

3. The Company will interconnect with any neighboring entity in order that the parties may seek and realize all benefits practicable to be effected through the coordination and development of their respective systems and in carrying out various interconnection services and transactions. The Company will assist to the fullest extent feasible any neigh-

---

[1] Applicant also supplies the entire bulk power requirements of the Cedar Point Light and Water Co., a small privately-owned utility (peak load 378 kw).

[2] These municipal systems include the Cities of Peru, Altamont, Breese, Bushnell, Carlyle, Freeburg, Highland, Mascoutah, Princeton, Red Bud, Sullivan, and Waterloo, Illinois, which are presently complainants in a proceeding before the Federal Power Commission (City of Peru, *et al.*, FPC Docket No. E-7514, filed December 5, 1969) in which they are seeking an order from the FPC directing Applicant or CIPS to interconnect with their facilities.

boring entity in the coordination of reserves through the sale and purchase of emergency energy and maintenance power upon terms that will provide for the full compensation of the Company's costs. No party shall be required to provide emergency energy or maintenance power if to do so will impair the supplying party's ability to render adequate and reliable service to its customers or to discharge its prior commitments, if any, to other electric systems.

4. The Company and the neighboring entity shall each provide sufficient capacity (which may include firm contracted for capacity) in its system to enable it to carry its planned for peak demand plus an adequate reserve. An adequate minimum reserve requirement shall be mutually determined from time to time as a percentage of planned for peak demand (unless otherwise agreed) and shall take into account such reserve criteria as the nature of the respective systems and planned for peak demand require in order to assure reliability of service and an equitable sharing of reserve responsibility. Each party shall provide such amount of spinning reserve as shall avoid the imposition of an unreasonable demand on the system of the other party. However, such spinning reserve requirement shall not exceed the minimum installed reserve requirement. If over a reasonable period, a party has failed to deliver emergency energy, or if a party has appeared to make excessive calls for emergency energy, the parties shall jointly study the matter for the purpose of determining the adequacy or inadequacy of the reserve generating capacity and transmission facilities being provided to meet the requirements of the interconnected systems and of determining the manner of correcting any deficiencies.

5. The agreement for the interchange arrangement between the Company and a neighboring entity will not include restrictive provisions which would preclude a party from engaging in interconnection and coordination arrangements with others, but may include appropriate provisions to assure (i) that the Company receives adequate notice of such additional interconnection or coordination, (ii) that the parties will jointly consider and agree upon such measures, if any, as are reasonably necessary to protect the reliability of the interconnected systems and to prevent undue burdens from being imposed on any system, and (iii) that the Company will be fully compensated for its costs. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.

6. Interconnections will be available for a neighboring electric system on any of the Company's installed transmission and subtransmission facilities if the proposed interconnection is technically and economically feasible and the Company is fully compensated for its costs. Interconnections will not be limited to low voltages when higher voltages are available from the Company's installed facilities in the area where the interconnection is desired. Control and telemetering facilities shall be provided as required for the safety and reliability of the interconnected systems.

7. The Company will afford an opportunity to participate to any neighboring electric system that makes a timely request therefor in the ownership of, or purchase of unit participation power from, Clinton Power Station Units 1 and 2, and any additional nuclear generating unit which the Company may construct, own, and operate and which in the application filed with the Atomic Energy Commission, or any successor agency, is scheduled for commercial operation prior to January 1, 1989, to a reasonable extent and on reasonable terms and conditions and on a basis that will fully compensate the Company for its costs incurred and to be incurred and that will not adversely affect the financing of such power station. The request shall be deemed timely with respect to Clinton Power Station Units 1 and 2 if received by June 30, 1974, and with respect to any additional generating unit if received within a reasonable period of time from a planning and operating standpoint after the public announcement by the Company of the proposed installation of any such unit. As a part of any arrangement that may be reached with respect to such participation, the Company will interconnect with and deliver any power to which the neighboring electric system may be entitled under such arrangement at a delivery point or points on the Company's system on a basis that will fully compensate the Company for its costs.

8. The Company will sell bulk power to any neighboring electric system in accordance with rates, terms and conditions which fully compensate the Company for its costs, and which do not restrict use or resale except as may be necessary to protect the reliability of the Company's system, and as are accepted or approved by the appropriate regulatory body or bodies. The Company shall not be required to make any such sale if the Company does not have available sufficient generation to provide the requested service or if the sale would impair the Company's ability to render adequate and reliable service to its customers or to discharge its prior commitments, if any, to other electric systems.

9. The Company will work with neighboring electric systems to facilitate the exchange of bulk power by transmission over its transmission facilities between or among two or more neighboring electric systems and between any neighboring electric system and any other electric system engaging in bulk power supply outside the Company's service area between whose facilities the Company's transmission lines and other transmission lines would form a continuous electrical path, provided that (i) permission to utilize such other transmission lines has been obtained by the proponent of the arrangement, and (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint. Such transmission shall be on terms that fully compensate the Company for its costs. Any neighboring electric system requesting such transmission arrangements shall give reasonable advance notice of its schedule and requirements. The Company shall not be required to enter into any arrangement which would impair system reliability or emergency transmission capacity, it being recognized that while some transmission facilities may be operated fully loaded, other transmission facilities may be for emergency use and operated either unloaded or partially loaded.

10. The Company shall include in its planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraph 9, provided any neighboring electric system gives the Company sufficient advance notice as may be necessary to accommodate its requirements from a functional and technical standpoint and that such neighboring electric system fully compensates the Company for its costs. The Company shall not be required to construct transmission facilities if it finds construction of such facilities infeasible, or if its costs in connection therewith would exceed its benefits therefrom, or if it finds such facilities would impair system reliability or emergency transmission capacity.

11(a). This statement of policy is not tended to affect in any way the franch certificates of public convenience and ne sity, or other rights of the Company or any neighboring electric system to rel electric service in the State of Illinois.

11(b). Nothing herein shall be constr as a waiver by the Company of its right contest whether or not and the extent which a particular factual situation may covered by this statement of policy or clude the Company from contesting alleged act of unfair competition.

11(c). The Company recognizes that carrying out of some of the policies pressed herein in particular circumstan may not be in the mutual interest of Company and a neighboring electric syst Nothing herein is intended to preclude Company and a neighboring electric sys from reaching an agreement which exte varies or supplements the provisions of foregoing paragraphs in a manner not inc sistent with the broad purposes expressed paragraph 2 and applicable law.

11(d). The Company does not intend this statement of policy to become a co mon carrier.

12. The foregoing policies are to be imp mented and applied in a manner consis with Federal, State and local laws, reg tions and orders. All rates, charges, t ditions, terms and practices are and will subject to the acceptance or approval of regulatory agencies or courts having ju diction over them. To the extent that a action may at the time be required in o to effect any such changes, the Company any neighboring electric system affected any of the foregoing policies reserve the r of recourse to the appropriate forum to s such changes therein as may at the time appropriate in accordance with law, the p lic interest, or good industry practices.

[FR Doc.74-10372 Filed 5-3-74;8:45 am]

[Docket No. PRM-50-10]

STATE OF NEW JERSEY—NUCLEAR ENERGY COUNCIL

Filing of Petition for Rule Making

Notice is hereby given that the St of New Jersey through its Nuclear E ergy Council, by letter dated March 1974, has filed with the Atomic Ener Commission a petition for rule maki

The petitioner requests that the r quirements in Appendix E of 10 C Part 50 for emergency planning and terfacing by Commission licensees w State and local governments be adop and applied to Commission licensees t are not otherwise subject to Appen E and who receive, store, process, and distribute large quantities of radioac materials routinely (e.g. firms wh process radioactive drugs or kilocu irradiators). The petitioner requests t rules be developed which will requ clear identification of critical nucli critical pathways, and critical segme of the population potentially at risk w provisions made for chemical form a variability of critical nuclides as a fun tion of varying product mix. The pe tioner requests that the requirements the Commission's "Reactor Site Cr teria," 10 CFR Part 100 be suita modified and incorporated into the pr posed rule, and that the zone definiti be reviewed and Protective Action Le

APPENDIX F: FERC Litigation Involving Illinois Power Company

Wholesale Rate Proceedings

Illinois Power and several municipalities in Illinois have been involved in various rate proceedings before the Federal Energy Regulatory Commission (FERC) and its predecessor agency, the Federal Power Commission (FPC). Many of the issues raised by the cities originated in the late 1960s and early 1970s and were resultant in part from Illinois Power's reluctance to offer power and back-up services to many smaller systems in its service area and also as a result of the oil squeeze beginning in the winter of 1973. It is staff's opinion that the issues raised during these proceedings to date were current at the time of the CP antitrust review and for this reason do not represent changes (in activities or proposed activities) since the CP review. Moreover, the issues raised by the intervening parties addressed rate matters and would be more properly aired before the FERC, i.e., any negative antitrust implications would be more likely remedied before the FERC than the NRC. Consequently, the issues pending before the FERC do not satisfy all of the criteria established by the NRC in Summer and no matter what the outcome before the FERC, these issues would not trigger an affirmative significant change finding and an ensuing OL antitrust review. However, the issues and contentions raised by the intervening parties before the FERC do shed light on competition among members of the electric power industry in Illinois Power's service area and for this reason a brief discussion seems in order.

In the late 1960s a group of Illinois (self-generating) municipal electric systems comprised of the Cities of Breese, Carlyle, Highland, Mascoutah, Peru, Princeton, Waterloo and the Village of Freeburg, petitioned the Federal Power Commission,

> "for an order under Section 202(b) of the Federal Power Act requiring Illinois Power Company to interconnect its facilities

and exchange capacity and energy with them on the same terms as those prevailing in interconnection agreements between the Company [Illinois Power] and its neighboring utilities."[1]

This case was settled in 1974 after Illinois Power agreed to the municipals' request for interconnection agreements. At about the same time, Illinois Power agreed to a set of policy commitments (which later became formal license conditions attached to the Clinton construction permit) with the Department of Justice which required Illinois Power, inter alia, to offer interconnections to neighboring power systems.

Subsequent to the municipalities' obtaining interconnections with Illinois Power, the oil embargo reached its peak and placed intense capacity and cost burdens on their systems. (Their systems were largely comprised of oil-fired peaking facilities.) The municipal systems requested long-term power supply arrangements under existing interconnection agreements with Illinois Power, to assure continuous operation and reliability of their systems and to limit radical upward movements in their costs of supplemental power requirements in future years. At issue before the FERC at present is the rate at which the municipals would pay for the partial requirements power only recently offered by Illinois Power.

According to Illinois Power, the rate schedule under which the municipals had been taking service was not designed for long-term continuous reservations of capacity, i.e., the type of service proposed by the municipals, because energy charges were unpredictable due to the incremental nature of the costs attributable to said reservations -- Illinois Power alleged that energy charges were a function of hour-by-hour load conditions and capacity availability. The incremental cost issue was resolved when Illinois Power agreed to offer the municipals a partial requirement power agreement (also required by the license

[1]Letter from S. L. Swarthout, Illinois Power Co., to Kenneth F. Plumb, Secretary, FERC, dated May 25, 1979, p. 2.

conditions attached to the Clinton nuclear plant) for renewable five-year periods and based upon fuel costs incurred by the company's plants during the period the contract is in force.[2]

In a separate proceeding, two municipal electric systems (Cities of Ladd and Oglesby) and one small private distribution system (Cedar Point, Light and Water Company) (all total requirements customers of Illinois Power) have intervened before the FERC to protest a 1976 wholesale rate increase by the Company (Dkt. E-9520). The principal contention of the intervenors was that Illinois Power could not unilaterally raise rates under their existing contracts with the Company. Ultimately, the D.C. Court of Appeals ruled in favor of the two Cities and against Cedar Point Light stating that Illinois Power's contract with Cedar Point Light permitted unilateral raising of rates by Illinois Power. This decision reversed the FERC order regarding Cedar Point. The FERC has yet to respond to the Court of Appeals decision which was issued on August 21, 1979.

In a similar rate proceeding involving the same parties (ER77-531), the intervenors petitioned the FERC requesting relief from another wholesale rate increase by Illinois Power in 1977. The FERC recently ruled upon this intervention[3] by granting Illinois Power a two-tier rate increase. Here again, the issues in dispute were FERC issues and not NRC related issues and they were resolved accordingly.

Generic Interconnection Rate Proceedings

Illinois Power has instituted new wheeling rates with all of the power systems it has interconnection agreements with -- as required by FERC Order No. 84. There has been no intervention by parties in the relevant marketing area.[4]

---

[2]See "Wholesale Electric Service Agreement," Exhibit A, between Illinois Power and the municipals, attached to Appendix F.

[3]See FERC orders dated April 10, 1981 and June 8, 1981.

[4]Docket NOs. ER 80-595 (Illinois Power/Commonwealth Edison); ER80-674 (Illinois Power/City of Springfield, Illinois); ER 80-675 (Illinois Power/Western Illinois Power Coop); and ER 80-731 (Illinois Power/Central Illinois Public Service Co., TVA and Union Electric Company.)

Moreover, the nature of these proceedings rests solely on justification of wheeling rates and it is staff's position that the actual determination of rates rests more within the jurisdiction of the FERC and not the NRC. Consequently, staff believes that the issues raised in the generic Order No. 84 proceedings would not invoke antitrust implications that would warrant remedy by the NRC.

AGREEMENT FOR PURCHASE OF POWER

FROM ILLINOIS POWER COMPANY

This is an agreement dated this 1st day of May, 1979, between ILLINOIS POWER COMPANY ("Utility" or "Company"), and the ("Customer").

Utility is an Illinois corporation with its business office at 500 South 27th Street in Decatur, Illinois, is engaged in the generation, transmission, distribution and sale of electric energy to the public in various municipalities and areas in the State of Illinois, and is a public utility within the meaning of an Act entitled "An Act Concerning Public Utilities," approved June 29, 1921, as amended, set forth in Chapter 111-2/3, Section 1 et seq. of the Illinois Revised Statutes, and now in force.

Customer owns and operates an electric generating and distribution facility and provides electric public utility service to customers located in and about

Customer desires to purchase electric energy for municipal uses and for resale to its customers, and Utility desires and is willing and able to supply Customer with electric energy for these purposes, on the terms and conditions hereinafter set forth.

In consideration of the mutual agreements herein contained, the parties agree as follows:

I. General Terms

Utility shall supply electric energy and Customer shall accept and pay for service rendered under the terms of Exhibits A and D, attached hereto, entitled Wholesale Elec Service for Resale to Agreement shall control if there is any conflict between the provisions of Exhibits A and D, except for the determination of contract capacity.

II. Conditions of Service

1. Customer requires and Utility agrees to supply a minimum amount of capacity according to the following five year schedule, beginning with commencement of the Agreement under Section X.

II. Conditions of Service (continued)

1st year	Kva
2nd year	Kva
3rd year	Kva
4th year	Kva
5th year	Kva

This capacity will be the initial "contract capacity" governed by the provisions of Section 5(a) of Exhibit A. At the expiration of each year, Customer will specify a new contract capacity for the fifth year following. In the absence of such specification, the contract capacity specified for the fourth year shall carry over to become the contract capacity for the fifth year.

2. Customer shall provide a volt substation at the point of delivery to transform energy received from Utility at volts to the volts required by Customer. (See Exhibit B.)

3. Utility requires an automatic circuit switcher or oil circuit breaker and lightning arresters at the point of delivery to protect its system from any faults on Customer's system. If Customer elects to install at its expense a Kv oil circuit breaker satisfactory to Utility, Utility shall control, operate, and maintain at Customer's expense such oil circuit breaker to assure satisfactory operation with its electric system. Customer shall either install or pay Utility the non-salvable cost of installing such lightning arresters plus a monthly rental for the salvable cost of the lightning arresters, all as provided in Exhibit C.

4. Utility shall extend its line to the point of delivery to Customer and shall furnish and install meters, recording devices and other apparatus necessary for the purpose of measuring the energy received by Customer at the point of delivery. The point of delivery shall be at the Kv bus installed in the Kv substation referred to in the preceding paragraph 2 located on Customer's property.

5. Customer agrees that any existing towers, poles, wires or equipment placed by Utility on the streets, avenues, alleys and public places in the shall be exempt from any special tax assessments, license or rental fee to Customer during the term of this Agreement.

II. Conditions of Service (continued)

6. Customer agrees to use reasonable care to design its circuits so that loads of the individual phases on its lines at the point of delivery will be balanced as nearly as practicable.

7. Customer and Utility agree to maintain and operate their systems in accordance with sound utility practices, so as to minimize the likelihood of a disturbance in either system which might cause impairment of service to the other party's system.

III. Rates and Charges

1. Customer agrees to pay Utility monthly for electric service rendered during the preceding month at the rates and charges due and payable therefor as provided in Exhibit A, attached, or as subsequently revised under Section X, paragraph 3.

2. Utility shall add to all charges under this Agreement and those provided for in Exhibit A the amount of any tax or charge of any kind levied, assessed, or charged by any municipal, state, or federal government, or authority becoming effective after the execution date of this Agreement, measured by but not included in the purchase price paid or revenues received by Utility on account of the service rendered under this Agreement.

IV. Meter Reading and Billing

1. Utility shall read meters and render bills monthly. Bills will be rendered at a gross charge using the rates and charges contained in Exhibit A in effect at the time, including other charges in this Agreement increased by two percent. Payment shall be due thirty days from the date of rendering the bill, and if made within that period, Customer shall be entitled to a two percent prompt payment discount from the gross charge. The gross charge shall be payable with respect to each bill paid after the due date.

2. Should either over-billing or under-billing occur due to causes other than inaccurate meter registration, it shall be corrected by proper allowance or payment upon written notice by either party to the other, by mail or by personal delivery, provided that such notice must be given within one year following the date on which the bill to be corrected is rendered.

IV. Meter Reading and Billing (continued)

3. If Customer has failed to pay any bill accruing under this Agreement on or before the thirtieth day after day of billing, Utility may discontinue delivery of electric energy provided at least fifteen days prior written notice has been given to Customer. Utility will not be liable in any manner for any loss or damage arising from such discontinuance of electric service.

V. Metering, Testing and Billing Adjustments

1. Utility shall own and maintain the number of meters and related metering equipment necessary to measure the demand and energy delivered to Customer by Utility at the point of delivery.

2. Utility shall test and calibrate the meters by comparison with accurate standards at approximately twelve month intervals.

3. Utility shall make special meter tests at the written request of Customer. If a special test made at Customer's request shall disclose that meters are registering within 2 percent of 100 percent accuracy, Customer shall bear the expense of the test; otherwise, the cost of such test shall be borne by Utility. Utility shall give Customer three days advance notice of its intention to test and calibrate meters when such test is requested in writing by Customer. Customer shall be permitted to witness any meter tests made by Utility.

4. Meters found by test to be registering inaccurately shall be restored to a condition of accuracy. If the inaccuracy exceeds two percent, the meter readings taken during the period of 90 days preceding (or during such shorter period as may have intervened since the previous test) shall be corrected by the percentage of inaccuracy found by the test and payment adjusted accordingly. No prior readings will be corrected.

VI. Rights of Access

Duly authorized representatives of either party hereto shall be permitted reasonable access to the premises of the other party if required to carry out the provisions of this Agreement. Each party shall have access to the facilities of the other party at a mutually agreed-upon time for the purpose of removing its own facilities from the facilities of the other party where such removal is permitted under this Agreement.

VII. Continuity of Service

1. Utility agrees to provide adequate and reliable service to Customer. However, Utility shall not be liable to Customer for interruption or inadequacy of service, loss or damage to property, or injury (including death) to any person caused by act of God, public enemy, vandalism, strikes and other labor troubles or their equivalent, legal process, state, municipal or other governmental regulation, windstorm, flood, fire or explosion, or other matter or thing beyond Utility's control, whether the same shall affect or occur in connection with the operations or property of Customer, Utility or any other person.

2. Utility shall not be responsible for damages due to any failure to supply electricity, or for interruption, or reversal of the supply, if such failure, interruption, or reversal is without willful default or negligence on its part, nor for interruptions, by underfrequency relays or otherwise, to preserve the integrity of Utility's system or interconnected systems.

3. Utility may interrupt service to make necessary repairs or to make changes in equipment or to install new equipment, but only for such reasonable times as may be unavoidable. If the nature of the situation permits, reasonable advance notice of these interruptions shall be given by Utility.

VIII. Liability

Customer shall not be liable for and Utility shall save Customer harmless against any and all claims, damages, liability or expense, resulting from or occasioned by the presence, use or maintenance of any electrical conductor or other type of equipment owned or maintained by Utility or Customer or by the escape of electric energy in or from any such conductor or equipment, provided that such claims, damages, liability or expense shall be caused by Utility's negligence or misconduct. Utility shall not be liable and Customer shall save Utility harmless against any and all claims, damages, liability or expense resulting from or occasioned by the presence, use or maintenance of any electrical conductor or other type of equipment owned or maintained by Utility or Customer, or by the escape of electric energy in or from any such conductor or equipment, provided that such claims, damages, liability or expense

VIII. Liability (continued)

shall be caused by Customer's negligence or misconduct. Negligence or misconduct, as used herein, shall include but not be limited to failure to comply with all General Orders of the Illinois Commerce Commission applicable to the furnishing of electric service by Utility or Customer, all regulations of the United States Occupational Safety and Health Administration and the Structural Work Act of the State of Illinois, or failure to meet any standard of care derived from any of such orders, regulations or statute.

IX. Annexed Areas and Other Services

1. Utility shall be permitted to continue to provide retail electric service on a non-exclusive basis to its existing customers or existing customers' premises served by Utility within the municipal limits as of the effective date hereof.

2. Whenever, after the date of this Agreement, Customer annexes an area in which Utility is providing electric service, the parties shall meet and shall negotiate in good faith as to the party to provide and the manner of providing electric service to present and future electric customers in the annexed area. Such negotiations shall be conducted by the parties in the light of all relevant matters, and any agreements made and procedures established by them shall be in the public interest and in accordance with then prevailing law and applicable regulatory authority.

3. Neither party to the detriment of the other party shall require any person to take electric service from it as a condition to, or in combination with, any other commodity or service, including but not limited to gas, sewer, water, or any other municipal or utility service.

X. Term of Agreement

1. This Agreement shall be for a term of five years commencing on the first date that Utility completes construction and installation of facilities necessary to provide service contracted for in Section II, paragraph 1. Such date shall be stated in a letter of understanding to be effected between the parties after service is commenced. The Agreement shall continue thereafter from year to year unless cancelled by either party at the expiration of the primary or extended term upon not less than two years prior written notice.

X. Term of Agreement (continued)

2. During the period prior to the beginning of the term of this Agreement as specified in Section X, paragraph 1, which is the interim period beginning May 1, 1979 and ending when Utility has completed the construction and installation of facilities necessary to provide the service contracted for in Section II, paragraph 1, Utility will supply service to Customer pursuant to the terms and provisions of the Interim Wholesale Electric Service Agreement which is attached hereto as Exhibit D.

3. All provisions of this Agreement which are obligatory upon or shall inure to the benefit of Utility shall inure to the benefit of all successors and assigns of Utility.

4. Nothing contained herein shall be construed as affecting in any way the right of either party under this Agreement to unilaterally make application to the Federal Energy Regulatory Commission or any successor agency for a change in rates set forth in Section 3 of Exhibits A and D hereof under Section 205, or any similar provision, of the Federal Power Act and pursuant to the Commission's Rules and Regulations promulgated thereunder or under any other applicable federal law or commission. It is further provided, however, that in the absence of agreement by Customer no change shall be made in any term or condition of this Agreement for Purchase of Power, or in any term or condition in Sections 1, 2, 4 or 5 of Exhibits A and D, until it has been finally approved by the Federal Energy Regulatory Commission (or any successor agency) under Section 206 of the Federal Power Act.

IN WITNESS WHEREOF, the parties hereto have duly entered into this Agreement the day and year first above mentioned.

ILLINOIS POWER COMPANY

By_____

Title_____

Date_____

Attest:

_____
As to Illinois Power Company
(Secretary

By_____

Title_____

Date_____

Attest:

_____ _____
As to
(Village Clerk)

Wholesale Electric Service Agreement

1. Availability

Service hereunder is available to the ("Customer") subject to the following conditions:

a. That Customer is engaged in the distribution and sale of electricity to the general public within the service territory served by Utility;

b. That Customer is located adjacent to Utility's lines having a capacity adequate to supply Customer's requirements in addition to the requirements of other customers already receiving service from such lines or that Utility shall have sufficient time before Customer shall require service to construct such lines. Prior to commencement of service hereunder, Utility will construct additional facilities to provide service to Customer, provided the cost of such facilities does not exceed one and one-half times annual revenue estimated by Utility to be received from Customer. Any costs in excess of one and one-half times this estimated annual revenue shall be paid by Customer to Utility;

c. That prior to the commencement of service hereunder, Customer shall execute and shall thereafter keep in full force and effect a written agreement with Utility with a primary term of five years.

2. Conditions of Service

Service hereunder shall be provided to Customer subject to the following conditions:

a. Should Customer desire to receive electric energy from any source other than capacity owned and operated by Customer and to operate in parallel with the power supplied by Utility to Customer under this schedule, it shall, in the absence of existing arrangements with Utility for the delivery of such power, give the Utility reasonable notice of such desire, specifying the requirements involved and the date when it desires such transfers to commence. Reasonable notice shall be defined as notice sufficient to allow Utility to continue safe and efficient operation of its system and shall be interpreted in an engineering context considering the facilities and requirements involved;

2. Conditions of Service (continued)

b. Utility shall be reimbursed for any expenses incurred by it by reason of the transfer of electric energy requirements referred to in subsection 2(a);

c. Service hereunder will be initially delivered to Customer for a volt three phase electric line having capacity sufficient to serve Customer's energy requirements. Utility retains discretion to select the supply line or lines from which service will be rendered to Customer. The supply line selected shall be the best available source with adequate capacity based on good engineering practices. Utility also retains discretion to change such supply line or lines and to change the voltage of the supply line or lines or other conditions of service. If such change is initiated by Utility, the cost of providing service under the new conditions including the cost of transformation shall be borne by Utility. In all other cases, except for changes caused by an increase in Customer's electric energy requirements which shall be governed by subsection 1(b), costs of changes shall be borne by Customer;

d. Customer shall provide and maintain all transformers and related facilities necessary for handling and utilizing the energy delivered hereunder;

e. Utility will provide and maintain one three phase voltage connection, provided Customer will make available, without charge to Utility, space required for Utility's lines and delivery facilities, and;

f. Utility will provide and maintain one point of delivery and metering equipment therefor. Such metering equipment shall be located on the high voltage side of Customer's transformation. Utility, at its discretion, may elect to install such metering equipment on the low voltage side of transformation (whether or not for the convenience of Utility or Customer) and in such case, both the demand and energy consumption will be increased to compensate Utility for transformer losses as measured by such metering equipment, or in the absence of such measurement, by computing such losses based on the manufacturer's data pertaining to the specific transformers installed.

3. Rates and Charges

The gross charge shall equal the sum of the charges below and any other applicable charges increased by two percent.

a. Customer Charge:

Delivery Voltage	Charge
4160 or 12,470 volts	$ 80.00 per mont
34,500, 69,000 or 138,000 volts	$110.00 per mont

3. Rate and Charges (continued)

		Charge per Kva of Billing Demand in Any one Month
b. Demand Charge:	Delivery Voltage 4160 or 12,470 volts	$3.73 per Kva
	34,500, 69,000 or 138,000 volts	$3.18 per Kva

c. Energy Charge: 1.25¢ per Kwh for all Kwh delivered by Utility in any one month

d. Cost of Power Adjustment:

(1) A Cost of Power Adjustment (CPA) will be applied to each Kwh of energy billed hereunder during the "billing period" as defined herein.

(2) $$CPA = \frac{(FCCG + ECPP + ECIP - FCIS) \times 100}{(CG + PP + IP - IS) \times LF} - .834¢$$

Where:

CPA = Cost of Power Adjustment. The amount rounde to the nearest .001¢ per Kwh to be charged each Kwh billed hereunder during any monthly "billing period" as defined herein.

FCCG = Fuel Cost of Company Generation. The cost o fossil fuel as included in Account 151 and t cost of nuclear fuel as included in Account 518, according to the FPC Uniform System of Accounts, consumed in "Company's plants" dur the "determination period."

ECPP = Energy Cost of Purchased Power. The net ene cost of energy purchased on an economic dis- patch basis from other utilities under pur- chased power agreements during the "determi tion period," exclusive of capacity or dema charges. Otherwise, the actual identifiabl fuel cost associated with such energy purch

ECIP = Energy Cost of Interchange Purchases. The energy cost of energy purchased on an econo dispatch basis from other utilities during "determination period" under interchange or interconnection agreements irrespective of designation assigned to such transactions. Otherwise, the actual identifiable fuel cos associated with such energy purchased.

FCIS = Fuel Cost of Interchange Sales. The cost o fuel consumed in "Company's plants" to gene energy sold to other utilities during the "determination period" through all inter- system sales.

3. Rates and Charges (continued)

CG = Company Generation. All Kwh generated durin the "determination period" in Company's plan

PP = Purchased Power. All Kwh purchased, except interchange purchases, from other utilities during the "determination period" irrespecti of the designation of such purchases.

IP = Interchange Purchases. All Kwh purchased or received from other utilities during the "determination period" under interchange or interconnection agreements irrespective of the designation of such purchases.

IS = Interchange Sales. All Kwh generated in "Company's plants" which were sold or furnis to other utilities during the "determination period" through all inter-system sales.

LF = Loss Factor. The estimated ratio of Kwh sal at the average delivery voltage of wholesale sales for resale to the Kwh generated for su sales. This ratio is .97.

(3) Definitions

(a) The "determination period" is defined as the calendar month immediately preceding the billing month.

(b) The "billing period" is defined as the period beginning with the 4th billing cycle of the month following the "determination period" and ending with the 3rd billing cycle of the next month.

(c) "Company's plants" is defined as Company's fossil and nuclear generating plants and Company's share of any jointly owned or leased fossil and nuclear generating plants.

4. Determination of Demands

a. Maximum kilovolt ampere (Kva) demand will be the highest average Kva delivered during any fifteen minute period.

b. Billing demand for any billing month shall be the greater of:

(1) 50% of the maximum Kva demand measured for the billing month, or

4. Determination of Demands (continued)

(2) the contract capacity

5. Additional Conditions and Contract Provisions

a. A capacity (called "contract capacity" herein) shall be as provided in Article II, Section 1 of the Agreement. In the event Customer's maximum Kva demand during the 13 consecutive hours of 10:00 a.m. through 11:00 p.m. on weekdays occurring during the period June 15 through September 14, in any one year, exceeds the contract capacity in effect at that time during any 3 fifteen minute intervals, no two of which shall be selected in any one calendar day the contract capacity shall be increased, without notice or other action by the amount by which the average of the three highest measured Kva demands exceeds the then existing contract capacity, and any existing contract shall be deemed to have been amended to include such increased capacity.

b. Customer may reduce Customer's contract capacity upon providing Utility with twelve months' prior written notice. However, in no event shall Customer be permitted to reduce Customer's contract capacity to a level below that specified under Article II, Section 1 of the Agreement.

c. If Customer requires service at the delivery point specified herein for existing, new or added capacity of 500 Kva or more in excess of the contract capacity which requires Utility to install special apparatus, Customer shall execute and keep in full force and effect a written contract with Utility for service which shall specify a contract capacity and other terms and conditions of service not inconsistent with those provided for herein. The primary term for such written agreement shall be five years.

d. The primary or extended term of any agreement provided for herein shall be automatically extended from year to year with the privilege of either party to terminate the agreement at the end of the primary term, or any extended term, on not less than two years' prior written notice.

e. Nothing contained herein shall be construed as affecting in any way the right of either party under this rate schedule to unilaterally make application to the Federal Energy Regulatory Commission or any successor agency for a change in rates set forth in Section 3 hereof under Section 205, or any similar provision, of the Federal Power Act and pursuant to the Commission's Rules and Regulations promulgated thereunder or under any other applicable federal law or commission. It is further provided, however, that

5. Additional Conditions and Contract Provisions (continued)

in the absence of agreement by Customer no change shall be made in any term or condition or service specified in Sections 1,2,4, or 5 hereof until it has been finally approved by the Federal Energy Regulatory Commission or any successor agency under Section 206 of the Federal Power Act