

NUCLEAR REGULATORY COMMISSION  
DUCKET NO. 50-341A  
THE DETROIT EDISON COMPANY  
NORTHERN MICHIGAN ELECTRIC COOPERATIVE, INC.  
AND WOLVERINE ELECTRIC COOPERATIVE, INC.  
NOTICE OF FINDING OF NO SIGNIFICANT ANTITRUST CHANGES  
AND TIME FOR FILING OF REQUESTS FOR REEVALUATION

The Director of Nuclear Reactor Regulation has made an initial finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review of Enrico Fermi Unit 2 by the Attorney General and the Commission. The finding is as follows:

"Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the 'significant change' determination with respect to nuclear reactors to the Director, Office of Nuclear Reactor Regulation. Based upon examination of events that have transpired since issuance of the Enrico Fermi Unit 2 construction permit to the Detroit Edison Company, the Northern Michigan Electric Cooperative, Inc., and the Wolverine Electric Cooperative, Inc., the staffs of the Office of Nuclear Reactor Regulation and the Office of the Executive Legal Director, hereafter referred to as the 'staff,' have jointly concluded, after consulting with the Department of Justice, that the changes that have occurred since the antitrust construction permit review are not 'significant' in an antitrust context to require a second antitrust review at the operating license stage of the application for licenses; i.e., the changes which have occurred either are not reasonably attributable to the licensees or do not have antitrust implications that would likely warrant some Commission remedy. In reaching this conclusion, the staff considered the events relevant to the Fermi 2 construction permit antitrust review and the events that have occurred subsequent to that permit review as well as events associated with the Greenwood Nuclear Plant application, an application ultimately withdrawn.

"The Summary and Conclusions of the staff's analysis is as follows:

'During the construction permit antitrust review of Fermi 2, the Attorney General was primarily concerned with a provision in the pooling agreement between Detroit Edison Company and Consumers Power Company which could have been construed so as

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to restrict interconnection and coordination arrangements with third parties. A 'no hearing' advice letter by the Attorney General was conditioned on a commitment letter by Detroit Edison to use its best efforts with Consumers Power Company to eliminate or revise the questionable provision. No intervention requests were received from the public in response to the publication of the advice letter in the Federal Register.

'Consistent with Detroit Edison's commitment letter, a new pooling agreement was entered into between Detroit Edison and Consumers Power Company which eliminated the offensive provision and expressly provided for coordination with third parties. However, such coordination was conditioned on the third party's ability to meet certain power supply and financial responsibilities.

'Subsequently, in connection with the construction permit antitrust review of Detroit Edison's proposed Greenwood Nuclear Plant, the Assistant Attorney General's antitrust advice letter did not specifically indicate whether the Justice Department was satisfied or not with the actions taken by Detroit Edison regarding third party coordination opportunities. Instead, the 'no hearing' advice letter was conditioned on the acceptance by Detroit Edison of certain commitments which would become conditions in the Greenwood licenses--conditions requiring Detroit Edison to interconnect and share reserves, provide emergency and maintenance service, allow joint participation in Greenwood and future nuclear units, coordinate in the planning of future transmission and generation, and provide transmission service and wholesale for resale service. Again, no intervention petitions were received from the public in response to the publication of the advice letter in the Federal Register.

'The Greenwood application was withdrawn and therefore the antitrust commitments did not become license conditions. Staff does not consider the submittal and withdrawal of the Greenwood application as a 'significant change' with respect to the Fermi 2 construction permit antitrust review, since there was no mention or apparent expectation of the Greenwood plant during the Fermi 2 construction permit review. In this regard, as previously noted, the Department of Justice had available to it the results of its Greenwood antitrust review and has concurred in staff's proposed finding of no significant changes with respect to the Fermi 2 operating license application.

'Staff's review of actions taken by the Detroit Edison Company since the Fermi 2 construction permit antitrust review has disclosed no 'significant changes' nor any actions inconsistent with its antitrust commitments made during the Greenwood review. Therefore, the staff, after consultation with representatives of the Department of Justice, recommends that the Director of Nuclear Reactor Regulation make a finding of 'no significant change' for Fermi 2.'

"Based on the staff's analysis, it is my finding that an operating license antitrust review of the Detroit Edison Company, the Northern Michigan Electric Cooperative, Inc., and the Wolverine Electric Cooperative, Inc., with respect to Fermi 2, is not required."

Signed on October 29, 1981 by Harold R. Denton, Director, Office of Nuclear Reactor Regulation.

Any person whose interest may be affected pursuant to this initial determination may file with full particulars a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 by (60 days).

FOR THE NUCLEAR REGULATORY COMMISSION

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