

DOCKET NUMBER

PETITION RULE PRM

50-54
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PALISADES GENERATING COMPANY
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Ann Arbor, Michigan 48106

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USNRC

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OFFICE OF SECRETARY

May 11, 1990

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555
Att'n: Docketing and Service Branch

Comments of Palisades Generating Company on
Public Citizen's Petition for Rulemaking
Docket No. PRM-50-54

Dear Sir:

By Federal Register notice on March 12, 1990 (55 Fed. Reg. 9,137), the Nuclear Regulatory Commission (NRC) solicited comments on a November 22, 1989 petition for rulemaking filed by Public Citizen. Public Citizen's petition asks that the NRC promulgate rules for the licensing of Independent Power Producers (IPPs) to include an affirmative showing of financial qualifications by an IPP seeking a construction permit or operating license. More specifically, Public Citizen seeks a rule requiring such IPP applicants to prepay or insure future decommissioning, Price-Anderson, and nuclear waste fund obligations.

In response, Palisades Generating Company (PGC) provides the comments below. PGC is a company being organized to acquire the

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Palisades Plant and to sell its capacity wholesale. While PGC may not be considered an IPP, PGC has an interest in Public Citizen's proposed rulemaking because Public Citizen's petition appears to assume, incorrectly, that any company selling power wholesale is an IPP.

At the outset, it should be observed that Public Citizen's petition is vague and does not identify with any precision who should be considered an IPP subject to Public Citizen's proposals. The term "independent power producer" is not well defined. IPP is not defined by any statute or regulation, but instead stems from a proposed FERC rule (a rule that has not been adopted). 53 Fed. Reg. 9,327 (1988). This vagueness is grounds in itself for denying Public Citizen's petition.

In addition, we believe that the proposal by Public Citizen to establish new financial qualifications procedures and criteria for IPPs is based on faulty assumptions and is unnecessary and improvident. Public Citizen's petition appears to presume that IPPs would escape financial qualifications review under existing rules. To the contrary, the NRC's existing financial qualification rules allow for such review. Second, Public Citizen's petition suggests that special requirements are appropriate because the financial viability of IPPs may be tenuous. Again to the

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contrary, in order to protect their investment, any investors in or lenders supporting an IPP would insist on adequate financial arrangements to address significant contingencies; but the financial assurances upon which the investors and lenders would insist might differ from the prepayment and surety methods unreasonably demanded by Public Citizen. The NRC's financial qualifications rule would allow the NRC to evaluate, on a case-by-case basis, the financial arrangements proposed. The Public Citizen rulemaking would simply eliminate this flexibility for no good reason; and in so doing, Public Citizen's insistence on prepayment of or surety for decommissioning, Price-Anderson, and nuclear waste fund costs would very likely create an artificial barrier to much needed new generating capacity, to the great disservice of the public and national interest.

A. Flexible Regulation Serves the Public Interest

The addition of new electric generating capacity has slowed significantly over the last decade, to the point where it is now even questionable whether base peak demand can be met by the middle of the 1990's. Long-term projections of capacity versus demand prepared by the Electric Power Research Institute (EPRI) in 1987 indicate that about 810 GWe of additional installed

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generating capacity will be needed through the year 2030 to meet increasing demand and replace retired units.

While there are many factors to which the worrisome decrease in new capacity can be attributed, the rate treatment applied to many new plants in recent years is a major contributor. Having faced large "prudence" disallowances, many utilities are hesitant to invest in new capacity.

Innovative ratemaking approaches could prove to be a solution to this dilemma. One such approach that has been gaining interest in the electric industry is the IPP concept; an IPP would be an entity permitted to sell power at prices established more competitively than in those set by traditional ratemaking methods. The opportunity presented by competitive pricing may be attractive to investors and hence renew investment in generating capacity.

The IPP concept has not yet been applied to a nuclear plant; even in the non-nuclear segment of the electric industry, the concept is still evolving. Nevertheless, the investors and lenders who are interested in such transactions are institutions well versed in project finance and who are not going to pursue such a project unless it is viable. A project would only be considered

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viable if there were adequate financial arrangements to cover all major costs contingencies, such as Price-Anderson assessments, decommissioning charges, and nuclear waste disposal costs.

While investors and lenders would insist on financial arrangements to cover major contingencies, they might choose financial protection methods other than prepayment. In structuring each project and choosing the appropriate funding mechanisms for items such as Price-Anderson, decommissioning, and nuclear waste fund charges, the investors and lenders would consider many business issues, such as tax consequences and lending requirements, all of which could effect the profitability of the venture. These considerations might make the type of prepayment demanded by Public Citizen inappropriate. As a consequence, if Public Citizen's demands were translated into new NRC rules, the IPP concept might never be applied to a nuclear plant, and an opportunity to foster new generating capacity would have been squandered.

B. The NRC's Current Regulations Would Allow
Financial Qualifications Review of IPP
With Appropriate Flexibility.

The NRC's financial qualifications rule, as it currently exists, would allow the NRC to review the types of financial

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arrangements proposed by an IPP on a case by case basis. Public Citizen's petition provides no clear explanation why the NRC's existing procedures are inadequate.

Public Citizen appears to assume that the NRC would simply label an IPP as an "electric utility" and give no further thought to its financial qualifications. Such an assumption is not consistent with the NRC's regulations (nor does the NRC conduct its regulatory affairs in so cursory a manner). The NRC has made it clear that it reserves the right to require such additional financial qualifications information in individual cases as may be necessary to decide a license application, even if the applicant qualifies as an electric utility under the NRC's definition. See 47 Fed. Reg. 13,750, 13,752 (1982).

Public Citizen's proposed rule would also apply to IPPs applying for a construction permit. Under the NRC's existing regulations, a financial qualifications review is required for any construction permit applicant. See 10 C.F.R. § 50.33(f) and App. C. This review properly focuses on construction and fuel cycle costs. It would be entirely unnecessary to require a construction permit applicant to prepay Price-Anderson, decommissioning, and nuclear waste fund costs, because none of these

liabilities will exist until after the plant has been granted an operating license.^{1/}

While Public Citizen does not identify who should be considered an IPP for purposes of its proposed rulemaking (see note 1 supra), its petition suggests that Public Citizen may incorrectly consider any wholesaler as an IPP.^{2/} See Petition for Rulemaking at 1-2 (distinguishing an IPP from a typical regulated utility on the ground that "IPPs must compete openly in the wholesale marketplace and may not have a steady supply of customers"). But one cannot assume that simply because a company sells its power wholesale, its supply of customers and revenues are uncertain. Experience demonstrates otherwise.

The "Yankee" companies operating single nuclear plants and selling the power wholesale have existed for years, and these companies have been steady, dependable, financially secure performers. The Yankee companies are corporations whose stock is

^{1/} The decommissioning obligation with which the NRC is concerned is restricted to the decontamination and disposal of radioactively contaminated equipment and facilities. Until a nuclear plant operates, there is no radioactive contamination.

^{2/} As previously noted, there is not yet a statutory or regulatory definition of an IPP, but under the FERC proposed rule, a number of factors must be considered to determine whether a company is an IPP.

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owned by a number of utilities. Each of these utility shareholders has executed a power purchase agreement committing to purchase the generated power at cost, and a capital funds agreement providing for the company's capital requirements. Thus, these single-asset, wholesale companies have a completely steady supply of customers and revenues covering costs.

The recently proposed transfer of Palisades to PGC provides another example of the inappropriateness of imposing Public Citizen's proposed financial requirements on a company because it sells its power wholesale. In the case of Palisades, PGC has executed a long-term power purchase contract requiring the purchaser to buy 100% of the available capacity. The rates under this power purchase agreement are designed to allow recovery of costs if the plant achieves a certain average capacity factor,^{3/} and moreover, the power purchase agreement includes pass-throughs of nuclear fuel, nuclear insurance (property insurance, Price-Anderson premiums, and Price-Anderson assessments), and decommissioning costs irrespective of power sold. Here, again, is a company established as a single-asset wholesaler with an assured

^{3/} Because the rates under PGC's power purchase agreement are reasonably designed to recover costs, PGC should qualify as an electric utility under the NRC's rule.

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customer and power purchase contract specifically covering the major contingencies singled out by Public Citizen.

The previously contemplated acquisition of Rancho Seco by Quadrex provides yet another example. Although the terms of that transaction were never fully developed, the parties were considering long-term power purchase contracts. Once again, it would not have been valid to assume that steady customers would be lacking.

In contrast to these examples, we know of no case where a company has been set up to sell power from a nuclear plant in the wholesale market without a source of customers. Thus, experience is exactly opposite to Public Citizen's assumption.

Further, the examples above indicate that there are a number of ways -- other than the prepayment or surety demanded by Public Citizen -- by which a wholesaler can provide reasonable assurance that nuclear waste fund, Price-Anderson, and decommissioning obligations are funded. In the case of the Yankee companies, these obligations are backed by utility shareholders. In PGC's case, such obligations are covered by pass-throughs to a utility purchaser in a long-term power purchase contract. Thus, prepayment and surety are only two of the many ways major contingencies

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can be provided for.^{4/} Public Citizen would needlessly eliminate all other alternatives.

C. Conclusion

In conclusion, the NRC's regulations already allow financial qualifications review of applicants when such review is deemed necessary. No new regulation is required to make sure relevant issues are considered. Further, there are many ways by which an operating license applicant proposing to sell power in the whole-sale market may provide for cost contingencies such as decommissioning, Price-Anderson premiums, etc. Such contingencies may be covered by shareholder commitments, by purchaser commitments, or perhaps by some novel approach not yet recognized. The NRC's regulations should and do have the flexibility to consider the variety of ways by which the operation of a plant and the various pertinent contingencies may be funded. Public Citizen's insistence on prepayment or insurance would needlessly eliminate this flexibility.

The Commission should also recognize that there is a national need for new generating capacity, which might be

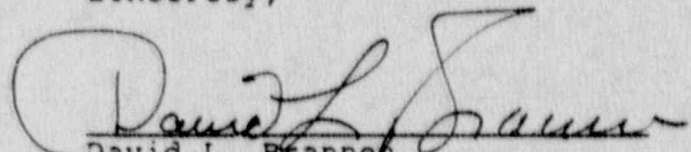
^{4/} In the case of Quadrex's proposed acquisition of Rancho Seco, prepayment of the decommissioning obligation was contemplated.

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supplied if varying financing and rate structures can be accommodated. Public Citizen's petition would prevent the NRC from considering new approaches on an appropriate case-by-case basis.

Accordingly, for the reasons stated above, Public Citizen's petition for rulemaking should be denied as both unnecessary and unreasonable.

Sincerely,

A handwritten signature in dark ink, appearing to read "David L. Brannen", is written over a horizontal line.

David L. Brannen
Vice President
Palisades Generating Company