

February 7, 1992

Docket No. 50-423A

MEMORANDUM FOR: Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

FROM: Frank P. Gillespie, Director
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

SUBJECT: NO SIGNIFICANT CHANGE ANALYSIS OF THE
MILLSTONE NUCLEAR POWER STATION, UNIT 3

Enclosed for your signature is a finding of no significant changes pursuant to the antitrust review of the proposed change in ownership in the captioned facility resulting from the proposed merger between Northeast Utilities and Public Service Company of New Hampshire. This finding is based upon an analysis by the antitrust staffs of PMAS and OGC (after consultation with the Department of Justice), which concludes that a "no significant change" finding is warranted. The staff analysis is enclosed as background information.

This is an initial finding which will be noticed in the Federal Register, thereby providing the public the opportunity to request a reevaluation of your finding. If there are no requests for reevaluation, the finding will become final, and the operating license antitrust review of Unit 3 of the Millstone Nuclear Station will have been completed.

Original signed by
Frank P. Gillespie

Frank P. Gillespie, Director
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

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proposed activities since the completion of the previous antitrust review.

Original signed by

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

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MILSTONE NUCLEAR POWER STATION, UNIT NO. 3
NORTHEAST NUCLEAR ENERGY COMPANY, ET AL.
FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides that an application for a license to operate a utilization facility for which a construction permit was issued under section 103 shall not undergo an antitrust review unless the Commission determines that such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous antitrust review by the Attorney General and the Commission in connection with the construction permit for the facility. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation.

By application dated January 23, 1991, the Northeast Nuclear Energy Company (NNECO or licensee), pursuant to 10 CFR 50.80, requested the transfer of the 2.8475 percent ownership interest of Public Service Company of New Hampshire (PSNH) in the Millstone Nuclear Power Station, Unit No. 3 (Millstone 3) to a newly formed, wholly owned subsidiary of Northeast Utilities (NU). This newly formed subsidiary will also be called Public Service Company of New Hampshire (hereinafter, reorganized PSNH). Millstone 3 underwent antitrust review at the construction permit stage in 1973 and again in 1977 with the addition of new owners in the facility. The operating license antitrust review of Millstone 3 was completed in

1985. The staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereinafter referred to as the "staff", have jointly concluded, after consultation with the Department of Justice, that the proposed change in ownership is not a significant change under the criteria discussed by the Commission in its *Summer* decisions (CLI-80-28 and CLI-81-14).

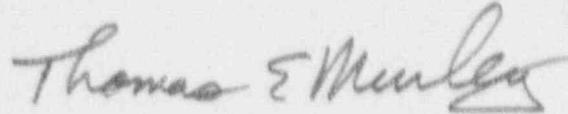
On May 13, 1991, the staff published in the Federal Register (56 Fed. Reg. 22024) receipt of the licensee's request to transfer its 2.8475 percent ownership interest in Millstone 3 to reorganized PSNH. This amendment request is directly related to the proposed merger between Northeast Utilities and Public Service Company of New Hampshire. The notice indicated the reason for the transfer, stated that there were no anticipated significant safety hazards as a result of the proposed transfer and provided an opportunity for public comment on any antitrust issues related to the proposed transfer. No comments were received.

The staff reviewed the proposed transfer of PSNH's ownership in the Millstone 3 facility to a wholly owned subsidiary of NU for significant changes since the last antitrust review of Millstone 3, using the criteria discussed by the Commission in its *Summer* decisions (CLI-80-28 and CLI-81-14). The staff believes that the record developed to date in the proceeding at the Federal Energy Regulatory Commission (FERC) involving the proposed NU/PSNH merger

adequately portrays the competitive situation(s) in the markets served by the Millstone 3 generating facility and that any anticompetitive aspects of the proposed changes have been adequately addressed in the FERC proceeding. Moreover, merger conditions designed to mitigate possible anticompetitive effects of the proposed merger have been developed in the FERC proceeding. The staff further believes that the FERC proceeding addressed the issue of adequately protecting the interests of competing power systems and the competitive process in the area served by the Millstone 3 facility such that the changes will not have implications that warrant a Commission remedy. In reaching this conclusion, the staff considered the structure of the electric utility industry in New England and adjacent areas and the events relevant to the Millstone 3 and Seabrook Nuclear Power Station construction permit and operating license reviews. For these reasons, and after consultation with the Department of Justice, the staff recommends that a no affirmative "significant change" determination be made regarding the proposed change in ownership detailed in the licensee's amendment application dated January 23, 1991.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or

proposed activities since the completion of the previous antitrust review.

A handwritten signature in cursive script, reading "Thomas E. Murley". The signature is written in dark ink and is positioned above the typed name.

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

MILLSTONE NUCLEAR POWER STATION, UNIT NO. 3
NORTHEAST NUCLEAR ENERGY COMPANY, ET AL
DOCKET NO. 50-423A
STAFF RECOMMENDATION
NO POST OL SIGNIFICANT ANTITRUST CHANGES

SEPTEMBER 1991

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7. THE MILLSTONE 3 AMENDMENT APPLICATION

By application dated January 23, 1991, Northeast Nuclear Energy Company (NNECO), pursuant to 10 CFR 50.80, on behalf of fourteen co-owners, requested the Nuclear Regulatory Commission (NRC or Commission) to approve the transfer of Public Service Company of New Hampshire's (PSNH) 2.875 ownership share in the Millstone Nuclear Power Station, Unit No. 3 (Millstone 3) to a newly formed, wholly owned subsidiary of Northeast Utilities (NU).

The requested transfer was precipitated by the proposed merger between NU and PSNH. On January 28, 1988, PSNH filed a petition with the United States Bankruptcy Court for the District of New Hampshire under Chapter 11 of the Bankruptcy Code. On December 28, 1989, the Bankruptcy Court approved a reorganization plan for PSNH that included the sale of all PSNH's business and assets to NU¹.

¹PSNH's ownership and interest in Unit 1 of the Seabrook Nuclear Station will be transferred to a new wholly owned subsidiary of NU (North Atlantic Energy Corporation) and PSNH's management and operating responsibilities with respect to Seabrook will be transferred to another wholly owned subsidiary of NU (North Atlantic Energy Service Company). The staff has addressed the competitive impact(s) of these proposed transactions in its Post OL Significant Change review of the Seabrook Nuclear Station.

Pursuant to the plan approved by the Bankruptcy Court, all of PSNH's non-Seabrook assets, including PSNH's 2.875 percent interest in Millstone 3, will be transferred to a reorganized PSNH. This newly reorganized PSNH will in turn be merged into a wholly owned subsidiary of NU, also designated as PSNH; as indicated by the licensee in its amendment application,

PSNH will become a wholly-owned subsidiary of NU after the merger, and thus the Millstone Unit No. 3 interest will undergo a change in control. [Millstone 3 Amendment, p. 2]

11. PREVIOUS MILLSTONE 3 NRC ANTITRUST REVIEWS

A. Construction Permit Review

By letter dated August 10, 1973, the Department of Justice (Department) issued advice to the Atomic Energy Commission pursuant to NNECO's application for a construction permit for Millstone 3. Although the advice letter did not suggest that the staff should hold an antitrust hearing, it noted that various allegations had been made by many of the public power systems in New England, principally those in the states of Massachusetts and Connecticut, against the larger privately owned power systems in New England regarding their competitive behavior.

In rendering its "no hearing" advice letter, the Department cited recent developments among both public and private power entities throughout the New England region that had improved markedly the past anticompetitive practices cited above. At the heart of the developments were negotiations concerning the formation of the New England Power Pool. [Staff Millstone 3 Operating License Analysis, p. 6]

In addition to the development of the New England Power Pool, the Department cited in its advice letter ongoing settlement negotiations between the public and private systems in New England which were designed to extend the benefits of production and transmission scale economies to all power systems in the region. Based upon the anticipated formation of NEPOOL and the consummation of the settlement agreement involving various factions within the New England bulk power market, the Department did not recommend a hearing in Millstone 3. The Department's advice letter was published in the Federal Register and no petitions to intervene were received. Consequently, the staff completed its initial construction permit antitrust review in August 1973.

In response to the addition of a new owner, Central Maine Power Company, and the increase in ownership shares of two existing applicants, Montaup Electric Company and the Massachusetts Municipal Wholesale Electric Company, the Department rendered additional advice to the staff in August 1977. The advice letter stated,

Our review of the information submitted by Central Maine and MMWEC, as well as other relevant information, has not disclosed any basis upon which to change our earlier conclusion that an antitrust hearing will not be necessary in this case.

The Department's 1977 advice letter was published in the Federal Register and no petitions to intervene were received.

In addition to the Department's supplemental review of 1977, the staff of the NRC received requests for changes in ownership shares of existing owners and new applicants requiring amendments to the construction permit and to the operating license application for Millstone 3. These share changes were deemed by staff to meet its de minimis criteria. Although the Department was notified of the changes, no advice pursuant to the competitive nature of the changes was solicited or received from the Department.

B. Operating License Review

As prescribed by Section 105c of the Atomic Energy Act, a prospective operating licensee is not required to undergo a formal antitrust review unless the staff determines that there have been "significant changes" in the licensee's activities or proposed activities subsequent to the review by the Department and the staff at the construction permit stage. The staff reviewed the licensees' changed activities as outlined in the data responses to Regulatory Guide 9.3 as well as other relevant public information and concluded in its Millstone 3 operating license analysis that,

After analyzing these changes, in conjunction with developments that were initiated prior to and during the construction permit (CP) antitrust review (i.e.,

the development of NEPOOL and the associated settlement agreement), staff found no significant anticompetitive effects resulting from these changes. [Staff Millstone 3 Operating License Analysis, pp. 24-25]

The staff's analysis and the conclusion that no significant changes had occurred were based principally on the fact that a diversity of systems engaged in the New England bulk power services market would, because of NEPOOL and the aforementioned settlement agreement, be better able to realize the benefits of production and transmission scale economies associated with access to baseload power sources and diversified transmission facilities throughout the region.

In its Millstone 3 operating license analysis, the staff identified several categories of changed activity by the licensees; however, none of these changes met all three of the Summer criteria necessary to initiate a formal antitrust review of the licensees' activities. Moreover, the staff indicated that, "[t]he changes identified in this review have tended to mitigate the market power of the larger systems throughout New England...." [Id., p. 14] Consequently, the staff recommended that the Director of the Office of Nuclear Reactor Regulation not issue an affirmative significant change finding in conjunction with the licensees' request for an operating license for Millstone 3.

III. NRC SEABROOK POST OL REVIEW

PSNH is a co-owner of Millstone 3 and the principal owner of the Seabrook Nuclear Station. Consequently, the proposed merger between PSNH and NU

involves a transfer of ownership rights in Seabrook as well as Millstone 3. An application to transfer PSNH's ownership interest to a newly formed wholly owned subsidiary of NU was filed with the staff in late November 1990. Moreover, a separate application requesting the staff to approve a change in the Seabrook plant operator was also filed in November 1990. Although PSNH's Seabrook and Millstone 3 interests were being transferred to different entities, each of these newly formed corporate entities is a wholly owned subsidiary of NU. Consequently, many of the issues and competitive concerns in the Seabrook and Millstone 3 amendment requests are the same.

The staff determined that the requests for operating license amendments to the Seabrook license should be reviewed as post OL significant changes. Moreover, in light of the decision by the Federal Energy Regulatory Commission (FERC), dated August 9, 1991, recommending extensive, procompetitive merger conditions associated with the NU-PSNH merger and per the review criteria set forth by the Commission in Summer, the staff felt that the potential anticompetitive effects that may result from the merger would be mitigated by the FERC merger conditions. Consequently, the staff recommended that the Director of the Office of Nuclear Reactor Regulation issue a No Significant Change Finding pursuant to the licensee's amendment requests.

IV. POST OL CHANGES

The principal change in activities that may impact the competitive bulk power services market served by the Millstone 3 plant since the issuance of the full power operating license is the proposed merger between PSNH and NU, i.e., the "reason d'etre" for conducting this review. Although PSNH's 2.875 ownership share will be transferred to a new entity, also named PSNH², this new entity will be a wholly owned and controlled subsidiary of NU. NU's control of this ownership in Millstone 3 also represents a change since the issuance of the full power operating license and is the change that potentially could most affect the bulk power services market served by Millstone 3. This change in ownership and any potential competitive effect as a result were examined by the staff in the context of a relatively depressed bulk power supply market throughout New England and in the context of the bankruptcy proceeding involving PSNH.

V. STAFF FINDINGS

The staff believes that the record developed in the FERC proceeding involving the NU-PSNH merger adequately portrays the competitive situation in the New England bulk power services market. If the proposed merger is consummated, a

²Reorganized PSNH (the NU wholly owned subsidiary) will own 2.875 percent of Millstone 3 as well as all of the non-Seabrook assets of old or bankrupted PSNH.

precondition of the Millstone 3 ownership transfer, and the merged firm is bound by the merger conditions recommended by the FERC, then the staff believes there will be no significant negative competitive effects in the New England bulk power services market or relevant submarkets as a result of the merger.

Even though there will be a new owner of PSNH's Millstone 3 ownership, the new owner will be a wholly owned subsidiary of NU which also owns and controls Connecticut Light and Power Company and Western Massachusetts Electric Company -- 52% and 19% owners of Millstone 3 respectively. The presence of another, much smaller, NU subsidiary, i.e., reorganized PSNH, in this market should not appreciably affect the relevant bulk power services market in question.

In its initial decision, the FERC indicated that an unconditioned merger would have anticompetitive consequences and as a result recommended a set of merger conditions designed to mitigate the possibility of any anticompetitive effects resulting from the merger. The staff believes that these merger conditions will obviate the need for any remedial action by the NRC pursuant to any changed activity detailed herein.

VI. SUMMARY AND CONCLUSIONS

The staff has determined that the request by NNECO for a transfer of ownership in Millstone 3 from old PSNH to reorganized PSNH should be reviewed for post operating license significant changes since the previous antitrust review of

the Millstone 3 facility. In light of the presence of two other Millstone 3 owners which are also wholly owned NU subsidiaries, and the recommendation by the FERC that extensive procompetitive conditions be made a part of the proposed NU-PSNH merger, the staff does not believe that the transfer of a 2.875 percent ownership share in Millstone 3 from PSNH to reorganized PSNH will adversely impact competition in the bulk power services market served by Millstone 3. Consequently, the staff recommends that the Director of the Office of Nuclear Reactor Regulation make a No Significant Change Finding pursuant to the licensee's instant amendment request.