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POLICY ISSUE
 (Information)

SECY-92-162

May 4, 1992

For: The Commissioners

From: James M. Taylor
 Executive Director for Operations

Subject: FINDING OF NO SIGNIFICANT CHANGE PURSUANT TO THE
 ANTITRUST POST-OPERATING LICENSE REVIEW OF THE
 MILLSTONE NUCLEAR POWER STATION, UNIT NO. 3

Purpose: To inform the Commission of a completed staff
 action

Discussion: By application dated January 23, 1991, Northeast
 Nuclear Energy Company (NNECO), acting as agent on
 behalf of fourteen co-owners of the Millstone
 Nuclear Power Station, Unit No. 3 (Millstone 3),
 requested the Nuclear Regulatory Commission (NRC
 or Commission) to approve the transfer of Public
 Service Company of New Hampshire's (PSNH) 2.875
 percent ownership interest in Millstone 3 to a
 newly formed, wholly owned subsidiary of Northeast
 Utilities (NU). The transfer request was
 precipitated by the proposed merger between NU and
 PSNH.

Pursuant to Section 105c of the Atomic Energy Act
 of 1954, as amended (Act) and the Commission's
 Rules and Regulations, the staff is required to
 conduct an antitrust operating license review to
 determine whether "significant changes" have
 occurred in the licensee's activities since the
 construction permit review. The Commission, in
 its Summer decision (11 NRC 817(1980)),

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Contact:
 W. Lambe, NRR
 504-1277

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interpreted its significant change responsibility and subsequently delegated the authority to make "significant change" determinations to the staff. In Summer, the Commission also set forth a definite set of criteria the staff must follow in making the determination of whether a "significant change" has occurred. 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 likely warrant some Commission remedy."

Pursuant to procedures set forth by the Commission in delegating authority to the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards, as appropriate, the Director of the Office of Nuclear Reactor Regulation has made a finding that as a result of the proposed merger, no significant antitrust changes have occurred since the operating license antitrust review of Millstone 3.

The Director's finding was published in the Federal Register on February 19, 1992 and provided for requests for reevaluation of the finding by March 20, 1992. No requests for reevaluation were received.

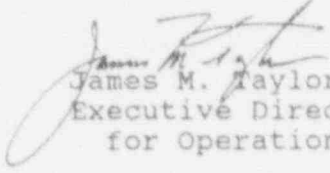
Although the Act does not specifically address the addition of new owners or operators after the initial licensing process, the staff has, in analyzing situations where new ownership occurs after issuance of an operating license, applied standards set forth by the Commission in the Summer proceeding in order to determine whether an antitrust review is required. Against this backdrop, the staff has conducted antitrust reviews of operating license amendment requests.

Although the actions taken by the staff, when faced with operating license amendments that request the addition of a new owner or placing a non-owner operator on a license, have been tailored to each particular amendment request, reviews of post-operating license amendment applications involving these types of changes have included an antitrust review by the staff and consultation with the Attorney General. The

antitrust review by the staff focuses on significant changes in the licensee's activities since the most recent antitrust review of the facility in question. The staff applied these criteria and procedures established by the Commission for dealing with "significant change" determinations in reaching its No Significant Change Finding for Millstone 3.

The staff determined that the record developed in the FERC proceeding involving the proposed NU-PSNH merger adequately portrays the competitive situation in the New England bulk power services market. If the proposed merger is consummated with the merger conditions recommended by the FERC, 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 and the requested change in Millstone 3 ownership.

Coordination: The finding was concurred in by the Office of the General Counsel.


James M. Taylor
Executive Director
for Operations

Enclosure:
Director's Finding of No
Significant Changes

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MILLSTONE 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).

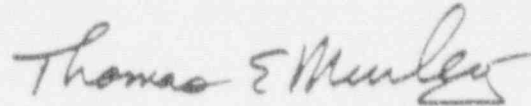
On May 13, 1991, the staff published in the Federal Register (56 Fed. Reg. 22024) receipt of the licensee's request to transfer its 2.8475 percent ownership interest in Millstone 3 to reorganized PSNH. This amendment request is directly related to the proposed merger between Northeast Utilities and Public 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