NRC PDR

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 2 8 1981

Docket Nos. 50-361
50-362

MEMORANDUM FOR: Joseph Rutberg
Director and Chief Counsel
Antitrust Division, OELD

FROM: Argil Toalston, Acting Chief
Utility Finance Branch
Division of Engineering, NRR

SUBJECT: SAN ONOFRE 2 AND 3, ANTITRUST OPERATING LICENSE ANALYSIS

Enclosed for your records is a copy of the staff analysis and appendices for the captioned analysis.

Argil Toalston

Argil Toalston, Acting Chief
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor
Regulation

Enclosures:
As stated

8105080 163

Docket Nos. 50-361
50-362

MEMORANDUM FOR: Joseph Rutberg
Director and Chief Counsel
Antitrust Division, OELD

FROM: Argil Toalston, Acting Chief
Utility Finance Branch
Division of Engineering, NRR

SUBJECT: SAN ONOFRE 2 AND 3, ANTITRUST OPERATING LICENSE ANALYSIS

Enclosed for your records is a copy of the staff analysis and appendices for the captioned analysis.

Argil Toalston, Acting Chief
Utility Finance Branch
Division of Engineering
Office of Nuclear Reactor
Regulation

Enclosures:
As stated

DISTRIBUTION:
UFB Reading
UFB Antitrust
AToalston Reading
Docket Files/w encl.
LPDR " "
NRC PDR " "

NRR:UFB
AToalston:na
3/23/81

OFFICIAL RECORD COPY

SAN ONOFRE NUCLEAR UNITS 2 AND 3
OPERATING LICENSE ANTITRUST REVIEW
FINDING OF NO SIGNIFICANT CHANGE

INTRODUCTION

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 authority to make the "significant change" determination with respect to nuclear reactors to the Director, Office of Nuclear Reactor Regulation. Based upon examination of the events that have transpired since issuance of the San Onofre 2 and 3 construction permits, 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 any changes that have occurred since the antitrust construction permit review are not sufficiently "significant" in an antitrust context as 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 licensee or do not have antitrust implications that would likely warrant some Commission remedy.[1]

STRUCTURE OF THE ELECTRIC UTILITY INDUSTRY IN SOUTHERN CALIFORNIA

The electric utilities in Southern California and their approximate MW annual peak loads are as follows:

---

[1] See Appendix 1 for the Department of Justice's letter to the NRC Staff.

Investor Owned Utilities	Load
Southern California Edison Company (SEC)	11,247
San Diego Gas and Electric Company (SDG&E)	1,746
Southern California Water Company	12
Municipals	
Los Angeles Department of Water and Power (LADWP)	3,700
Anaheim Utilities Dept.	348
Riverside Public Utilities	254
Vernon Municipal Light Dept.	240
Burbank Public Service Dept.	180
Glendale Public Service Dept.	180
Pasadena Water and Power Dept.	180
Azusa Light and Power Dept.	38
Colton Electic Utility Dept.	24
Banning Electric Dept.	14
Other	
Imperial Irrigation District (Imperial)	330
Anza Electric Cooperative Inc.	30

In addition to the above, the Metropolitan Water District (MWD) has a load of approximately 231 MW and generation of approximately 315 MW, each of which are integrated into the SCE system and generally reported as load and generation within the SCE system. MWD has interconnections with SDG&E and the U. S. Bureau of Reclamation as well as with SCE.

Of the above electric utilities SCE, SDG&E, LADWP, Burbank, Glendale, Pasadena and Imperial have significant amounts of self generation. The others purchase all or the majority of their bulk power requirements from SCE.

SDG&E's generation consists almost entirely of oil and gas fired generation. SCE likewise has a considerable amount of oil and gas fired generation. SCE, however, also has other generation sources, including a number of self-owned hydro generating units, and participation in the Hoover hydro plant in Nevada, the Four Corners coal plant in New Mexico, the Mohave coal plant in Nevada and the San Onofre nuclear Unit 1. In addition, SCE obtains sizeable amounts of its energy requirements from the Pacific Northwest over ownership rights it has in both D.C. and A.C. interties from that area. SCE had a total electric energy production of 54,915 GW hrs. in 1975 of which 13,726 GW hrs. came from out of state.[2/]

The generation of the municipals in Southern California also consists primarily of natural gas or oil fired generating units, although LADWP has considerable hydro generation including the Castaic pumped storage plant and ownership rights in the Hoover plant in Nevada. LADWP also has ownership rights in coal fired generating units at Mohave in Nevada and Navajo in Arizona. LADWP, Burbank, Glendale and Pasadena are joint owners with SCE in an 800 kv D.C. interconnection between the Pacific Northwest

---

2/ See Appendix 2.

and Southern California. These municipals obtain a significant part of their power supply requirements over this intertie.

The major part of the transmission network in Southern California is owned by SCE. SDG&E, Imperial and LADWP also own appreciable amounts of transmission. The other systems in the area own small amounts or no transmission.

SCE is interconnected to the north with Pacific Gas and Electric Co. (PG&E), to the south with SDG&E, and to the east with Nevada Power Company and the Arizona Public Service Company (APS). SCE is connected also to the municipal electric utilities described above with the exception of Glendale, Burbank and Pasadena. SDG&E is interconnected with Imperial as well as with SCE. LADWP is interconnected with SCE, Glendale, Burbank, Pasadena and the Nevada Power Company.

As of December 17, 1974, SCE was projecting major future power supply sources from: 1) the Long Beach, Lucern Valley, Coolwater and other unnamed combined cycle and combustion turbine units; 2) layoff power from the Navajo coal fired plants; 3) the San Onofre, San Joaquin, and Vidal Nuclear generating units; and 4) the Kaiparowits coal-fired generating units.[3/] Several of the municipal electric systems in Southern California had expressed various degrees of interest in participating in these projects. In addition, the Cities of Los Angeles, Anaheim, Glendale,

---

3/ See Appendix 3.

Pasadena, Burbank, and Riverside were considering participation in a four unit 3,000 MW coal fired plant designated as the Intermountain Power Project to be located in Utah.*/ As of February 12, 1974, the capacity of the project was fully subscribed and capacity was not available to SCE.4/ As of February 21, 1979 the four units were scheduled for 1987 to 1990 operation. Anaheim and Riverside were planning participation amounts of 307 MW and 204 MW respectively.

By 1979, the San Joaquin, Vidal and Kaiparowits projects had been cancelled. A two unit nuclear plant at Sundesert in which SDG&E, and the cities of Los Angeles, Burbank, Anaheim, Glendale, Pasadena and Riverside planned to participate, was also cancelled. A five unit nuclear plant at Palo Verde was added to the resource plan, with units 4 and 5 later cancelled. The San Joaquin, Vidal, Sundesert and Palo Verde nuclear plants are described further in the following section.

THE SAN ONOFRE CONSTRUCTION PERMIT ANTITRUST REVIEW

The construction permit application for San Onofre 2 and 3 named SCE as an 80% owner and SDG&E as a 20% owner in the plant. The application was on file with the Commission at the time of the enactment into law of P. L. 91-560 in December of 1970, and was therefore treated under the grandfather provision of Section 105c(8) of the Atomic Energy Act of 1954, as amended.

---

*/ The plant is to be owned by 23 Utah cities which belong to the Intermountain Power Agency. The named California cities, six Utah rural electric cooperatives and Utah Power and Light Co. will receive unit power from the plant under a contract arrangement.

4/ See Appendix 4.

The application was first transmitted to the Attorney General for antitrust advice on January 14, 1971. This was followed later by a supplemental transmittal on April 1, 1971, of specific antitrust information.

The Attorney General's advice letter of July 12, 1971 recommended a hearing with respect to SCE's activities.[5/] It differentiated between SDG&E and SCE stating:

> "As we have indicated, there are few small utilities adjacent to the San Diego Service area, and it has no all-requirements wholesale customers; this antitrust review has thus focused primarily upon the effect which the granting of this application would have upon Edisons's relationship to its present wholesale all-requirements customers."

Prior to the Attorney General's advice letter, the Cities of Anaheim, Riverside and Banning petitioned to intervene in the antitrust proceedings.[6/] This petition was renewed on September 24, 1971, following the Attorney General's advice letter. The essence of the Cities' petition was that SCE had refused to allow the Cities to participate in the building of new generation or to allow the Cities to use transmission capacity in excess of SCE's needs.[**/]

After the Attorney General's antitrust advice letter and the Cities' petition to intervene in the proceedings, negotiations between SCE and the Cities led to a settlement agreement between SCE and the Cities dated August 4, 1972.[7/] Cities agreed to withdraw their petitions to intervene

---

5/ Appendix 5.
6/ Appendix 6.
**/ P.3 of the petition.
7/ Appendix 7.

in Federal Power Commission Docket No. E-7618 regarding wholesale rates filed by SCE; in Federal Power Commission Projects 67 and 120 (pertaining to relicensing certain hydroelectric projects of SCE); in California Public Utilities Commission Certificate Application No. 52976 (pertaining to a proposed 500 kv transmission line by SCE); before the Atomic Energy Commission with respect to San Onofre, and to dismiss their appeal No. 71-1652 before the U. S. Court of Appeals for the District of Columbia regarding unilateral rate filing by SCE before the Federal Power Commission. In exchange, the Cities were to receive a settlement sum in excess of three million dollars from SCE. Further, SCE agreed to provide service to the Cities at higher voltages, to allow high voltage discounts, not to increase wholesale rates prior to June 1, 1973, to allow participation in new jointly owned generating units initiated by SCE, to provide partial requirements service, and to provide integration and transmission services for the Cities as described more fully below.

The Settlement Agreement also required SCE to engage in combined dispatch (with the Cities) of power resources, sharing of reserves, transmission services and purchase and sale of capacity or energy and other necessary supplemental services, all as a part of an integrated operations agreement (IOA). Transmission service was to be provided over SCE's 220 kv network and also on a point-to-point basis outside of the 220 kv network. The transmission service was limited to SCE's certificated service area except that SCE agreed to use it "best efforts" to transmit City-owned power over existing facilities solely owned by SCE outside the SCE service area.

Concurrent with and following the settlement negotiations between SCE and the Cities, SCE was working with the staffs of the AEC and Department of Justice toward formulating license commitments that would alleviate the antitrust concerns of the AEC and Department of Justice.

In view of these efforts and the Settlement Agreement, the Commission requested further advice of the Attorney General regarding the need for a hearing. The second advice letter, dated June 27, 1974, stated that no hearing would be required if certain license conditions which SCE had agreed to were imposed[8/]. The conditions, which were attached to the San Onofre construction permits, required SCE to allow participation in nuclear units which SCE initiated and to cooperate with other entities in securing participation in nuclear units not initiated by SCE. Further, SCE was required to provide transmission services within its service area, to permit interconnection and coordination of reserves, and to sell and purchase bulk power from entities within or contiguous to its service area.

Although the license conditions appear to be broader than the settlement agreement with respect to the number of applicable entities, they appear to be less broad than the settlement agreement with respect to services provided. In particular, the settlement agreement provides access to other jointly owned generating facilities, as well as nuclear, which SCE initiates, whereas the license conditions require access only to nuclear units.

8/ Appendix B.

EVENTS SUBSEQUENT TO SAN ONOFRE CONSTRUCTION PERMIT REVIEW

In March of 1974, SCE submitted antitrust information for a twin 770 MW HTGR nuclear facility designated as the Vidal Nuclear Generating Station. This plant was later postponed because of energy conservation measures and subsequently cancelled before the Attorney General's advice letter was received by the NRC.

An Application by SCE, LADWP, the California Department of Water Resources (DWR), the Northern California Power Agency (NCPA), the Pacific Gas and Electric Company (PG&E) and the Cities of Anaheim, Glendale, Pasadena and Riverside was docketed on May 21, 1975 in connection with plans to construct and operate four generating units, each rated at 1170 MW, designated as the San Joaquin Nuclear Project. The Attorney General's advice with respect to the application was requested on May 27, 1975. By letter dated November 24, 1975, the Attorney general advised that in light of the license conditions agreed to by SCE in connection with the San Onofre Nuclear Plant that no hearing would be required in connection with the application for participation in the San Joaquin plant.

SDG&E was reviewed a second time by the Attorney General following an application submitted by SDG&E on October 29, 1975, for a proposed two-900 MW unit nuclear power plant designated as the Sundesert Nuclear Plant. In addition to SDG&E, the cities of Los Angeles, Burbank, Anaheim, Glendale, Pasadena, and Riverside planned to participate in the project. The Attorney General supplied antitrust advice respect to SDG&E on May 12, 1976, and later with respect to the Cities of Anaheim, Glendale, Pasadena and

Riverside, on September 2, 1977. Additional advice with respect to the Cities of Los Angeles and Burbank was supplied on July 26, 1978. In each instance, the Attorney General found no basis for recommending an antitrust hearing. Shortly afterwards, in 1978, Sundesert was cancelled after an unfavorable ruling by the California Public Utility Commission.

Another antitrust review involving SCE was with respect to its participation in the Palo Verde Nuclear Units 1, 2, and 3.* The Attorney General advised by letter dated April 6, 1976 that:

> "Given the present applicability of the procompetitive San Onofre license conditions, and the absence of any information to the contrary of which we have become aware in the course of this antitrust review, the Department believes no antitrust hearing will be necessary as a result of the addition of Southern California Edison Company as a 15.4 percent owner in the proposed Palo Verde Nuclear Generating Station."

Additional advice by the Attorney General dated September 13, 1978, regarding SCE's participation in Palo Verde Units 4 and 5,** recommended that no hearing was required. By letter dated October 25, 1978, to the Assistant Attorney General,9/ Counsel for the cities of Anaheim and Riverside took issue with respect to the Attorney General's advice on Palo Verde 4 and 5.

---

*/ Other participants in Palo Verde 1, 2 and 3 were Arizona Public Service Co. (APS) Salt River Project Agricultural Improvement and Power District (SRP), El Paso Electric Co. (EPEC), Public Service Company of New Mexico (PSNM) and LADWP.

**/ Other participants in Palo Verde 4 and 5 were APS, EPEC, LADWP, SDG&E, Nevada Power Co., and the Cities of Anaheim, Burbank, Glendale, Pasadena and Riverside.

9/ Appendix 9.

The letter stated:

> "Contrary to the implications of your letter, it is the Cities' experience that the San Onofre conditions have neither resolved nor prevented situations inconsistent with the antitrust laws. In Cities' view, Southern California Edison Company has not lived up to the San Onofre conditions, or if the conditions be narrowly construed, Edison has in any event acted anticompetitively"

Specifically, the Cities alleged that SCE had refused to provide firm transmission service from the Northwest and had imposed a price squeeze on the Cities. In the October 25, 1978 letter, the Cities recommended action outside the Palo Verde proceeding because many other electric systems which were involved could be adversely affected if construction of the project was delayed by an antitrust review. The staff was conducting an inquiry into the Cities' allegations when the Palo Verde Units 4 and 5 were cancelled The Cities' allegations are discussed in further detail later in this review analysis.

Application by SCE to transfer a 1.66% interest in the San Onofre units 2 and 3 to the City of Anaheim and a 1.79% interest to the City of Riverside was submitted on July 17, 1979. In a subsequent antitrust advice letter dated January 31, 1980, with respect to the two Cities, the Attorney General advised that the participation in the San Onofre 2 and 3 units by the Cities did not warrant any change in the Attorney General's previous advice regarding the participation of the Cities in the San Joaquin and Sundesert nuclear plants. The Attorney General's advice letter was published in the Federal Register on February 14, 1980 providing interested parties an opportunity to request a hearing, but no requests were received.

REVIEW FOR SIGNIFICANT CHANGES

Staff's review of electric utility relationships in Southern California suggests that the principal issues in an antitrust context center on access to future power supply sources, particularly those outside of Southern California, and the means of transmitting power from the sources to municipal electric systems within SCE's service area. Therefore, in assessing any significant changes that may have occurred since the San Onofre construction permit antitrust review, staff's primary focus is on changes reasonably attributable to SCE or SDG&E that have occurred with respect to outside power supply sources and associated transmission and have antitrust inplication that would be likely to warrant some Commission remedy.*/ In this regard, two of the San Onofre license conditions are particularly relevant. These are:

> 3. SCE shall, pursuant to such principles, permit participation on mutually agreeable terms in new nuclear generating units initiated by SCE, upon timely application by any entity(ies) within or contiguous to SCE's service area which at that time does not have access to an alternative comparably-priced source of bulk power supply. With respect to those units not initiated by SCE in which SCE is a joint participant with other utilities, SCE shall cooperate in facilitating the participation of any such entity(ies) which seeks such participation upon timely application.

---

*/ See South Carolina Electric & Gas Co (Virgil C. Summer Nuclear Unit No. 1) CLI-80-28 slip op. at 7 (June 30, 1980).

6. SCE shall, pursuant to such principles, transmit bulk power over its transmission facilities within its service area, both between or among two or more entities with which it is interconnected to the extent that such transmission can be found to be functionally, technically and economically feasible and can be effected without an adverse effect on service to its own customers. SCE is obligated under this condition to transmit bulk power on the terms stated above, and in connection with SCE's plan to construct new transmission facilities for its own use within its service area, to include in its planning and construction program sufficient transmission capacity as required for such transmission, provided that such entity(ies) are obligated to compensate SCE fully for the use of its system. SCE shall use it best efforts to facilitate the transmission of bulk power over then existing transmission facilities outside its service area for such entities.

Staff considers the 1972 settlement agreement also relevant in looking for significant changes because that agreement provided the basis for the second request to the Attorney General as to whether a hearing was still required after such settlement. Staff considers the following settlement agreement provision particularly relevant:

4.1 Edison agrees, subject to regulatory authorization, to make available to Cities the following services and will take the steps reasonably necessary to seek to obtain such authorization.

4.1.7 Participation on a mutually agreeable basis in new generating units initiated by Edison in which Edison is a joint participant with other utilities or generating agencies. Such resources shall be integrated in accordance with those principles set forth in Exhibit A concerning integrated operation.

Power Supply Sources

SCE has consistently refused to allow other electric utilities to participate in non-nuclear generating units planned solely for SCE's own use. Such facilities included the Lucerne Valley, Long Beach and Cool-water combined cycle projects. SCE's refusal to allow others to participate in these non-nuclear facilities which were to be solely owned by SCE does not represent a change in SCE's activities subsequent to the consruction permit review and is not inconsistent with its San Onofre license conditions or 1972 settlement agreement.

Riverside and Anaheim are to be ownership participants in San Onofre 2 and 3 along with SCE and SDG&E. As far as staff is aware, no other entities desired to participate in San Onofre with the exception of Glendale. Glendale expressed an interest in participation[10/] after the time period in which entities were allowed to indicate an interest had expired. SCE declined to allow Glendale participation stating that the power from San Onofre was needed to meet its own load requirements [11/] and the time period for which SCE was required by its license conditions to offer participation had expired. Staff agrees that SCE's refusal to allow late participation was consistent with its license conditions and did not represent a "significant change" following the construction permit review.

10/ See Appendix 10.
11/ See Appendix 11.

Three generating projects in which other entities as well as SCE considered participation were later cancelled. These included the Palo Verde 4 and 5 nuclear project, the San Joaquin 1, 2, 3 and 4 nuclear project, and the four unit Kaiparowits coal fired project. Another generating project, the Sundesert nuclear plant, in which SCE did not plan to participate but other entities in Southern California did, was also cancelled. Although cancellation of the above projects removed potential power supply sources from the Southern California entities and were significant changes in that context, staff is unaware of any evidence that these cancellations in themselves had an anticompetitive basis reasonably attributable to SCE or SDG&E. Thus they were not significant changes in the context of staff's San Onofre Operating License antitrust review. Also, the 3,000 MW coal fired Intermountain Power Project as described previously is still under active consideration and is expected to provide for some of power supply requirements of the Southern California municipals.

The Palo Verde 1, 2, and 3 nuclear plant is a generating project in which SCE has considerable participation in but did not itself initiate. This latter fact is significant in that the SCE's San Onofre license conditions require SCE to offer access only in nuclear units which it initiates. Arizona Public Service Company was the lead applicant in the Palo Verde 1, 2 and 3 project. Other participants in addition to SCE are the Salt River Project, the El Paso Electric Company and the Public Service Company of New Mexico. Although, SCE did not offer access in the Palo Verde Units 1, 2 and

3 to other electric utilities in SCE's general service area, this was not inconsistent with its license conditions. Staff's antitrust concerns do not center on the issue of allowing ownership from its share of Palo Verde Units 1, 2 and 3 but rather on the position taken by SCE as to providing transmission services from the project (in Arizona) to Cities in Southern California which may have prevented the Cities from obtaining ownership participation from other owners of the project who were willing to sell a part of their ownership shares. These transmission considerations with respect to Palo Verde and also for other potential power supply sources are discussed in the following section.

Transmission From Palo Verde

An ownership share in the Palo Verde Units 1, 2 and 3 by the Southern California Cities would most likely have been too small to justify building their own transmission line from the project. It would therefore have been necessary for them to share in the ownership of the transmission facilities with SCE or alternatively obtain firm transmission service from SCE. Anaheim inquired of SCE as to whether it would be willing to share in the ownership of a proposed 500 Kv line from Palo Verde to Southern California.[12/] SCE's reply was to name a number of future projects which it might participate in which would use up the capacity of the line such that long term firm power was not available for Anaheim.[13/] SCE did indicate that it was willing to discuss short term firm transmission service. Anaheim

---

12/ January 17, 1977 letter to Robert L. Myers from Gordon W. Hoyt. See Appendix 12.

13/ March 16, 1977 letter to Gordon W. Hoyt from Robert L. Myers. See Appendix 13.

apparently did not follow-up on this offer presumably on the basis that short term service would not be suitable for ownership participation in a nuclear plant. Anaheim's reply was that Edison's position appeared contrary to the tenor and terms of its other agreements with SCE and with SCE's nuclear plant license conditions.[14/]

The San Onofre license conditions state:

> "SCE is obligated under this condition to transmit bulk power on the terms stated above, and in connection with SCE's plan to construct new transmission facilities for its own use within its service area, to include in its planning and construction program sufficient transmission capacity as required for such transmission....."(emphasis added)

Because of the "within its service area" caveat, staff does not consider SCE to be in violation of its license conditions. However, staff notes a quote from the Attorney General's initial advice letter on San Onofre as follows:

> "A number of actions taken and positions asserted by Edison during this past period appears, on the basis of present information, to have had the effect of unreasonably foreclosing its wholesale customers from bulk power supply alternatives."

The position which SCE took with respect to providing transmission service from Palo Verde would appear to have the exact effect which the Attorney General condemned in its San Onofre 2 and 3 advice letter. The change that has occurred since the construction permit review is that most power supply

---

14/ April 1, 1977 letter to Robert L. Myers from Gordon W. Hoyt. See Appendix 14.

alternatives available to SCE's wholesale customers have developed outside of SCE's control area. As a result, the license conditions which the Justice Department negotiated with SCE do not appear to have had the expected effect. Although SCE may have adhered to the letter of its license conditions and may have not been directly responsible for the changed power supply situation, it may have unreasonably taken advantage of the changed circumstances .

SCE's reasons for its refusal to allow Anaheim to participate in the Palo Verde line are not convincing. At the time of the refusal, SCE recognized that a second 500 Kv line would be required to deliver its power just from Palo Verde. In answer to a staff question[15/] in this regard, SCE replied:[16/]

> "Edison recognized at the time of its initial response to Anaheim and Riverside that the No. 1 Palo Verde -- Devers 500 Kv transmission line would be inadequate to transmit the output of its proposed participation share in Palo Verde Units 4 and 5, in addition to its firm 580 Mw participation share of Palo Verde Units 1-3, and therefore that more than one 500 Kv line would be required to carry out the functions which Edison itemized."

If the second 500 Kv line was required anyway, then the worst effect on SCE of transmitting nominal amounts of power to Anaheim and Riverside would have been an advancement in time of the second line. Yet, in its correspondence with Anaheim, SCE's refusal was outright with respect to long term firm power, and the second 500 kv transmission line was not even mentioned in that refusal.

15/ October 18, 1979 letter to James H. Drake from Argil Toalston. See Appendix 15.

16/ P. 12 of February 4, 1980 letter to U. S. Nuclear Regulatory Commission from David N. Barry. See Appendix 16.

There is evidence that SCE's refusal to consider providing transmission service to Anaheim and Riverside from Palo Verde Units 1 to 3 may have been competitively motivated. SCE's reply to Anaheim */ contains the following statement:

> "You are also aware that Edison has expressed an interest in acquiring a portion of Salt River Project's interest in the Palo Verde Nuclear Project."

The above was in reply to Anaheim's January 17, 1977 letter which stated:

> "The City of Anaheim is discussing with the Salt River Project acquisition of a part of their interest in various generating projects in Arizona, among the projects being discussed is the Palo Verde Nuclear Project."

Riverside had a similar interest in obtaining a share of the Salt River Project's interest in Palo Verde. Thus, SCE was competing with Anaheim and Riverside for a portion of Salt River Project's share of Palo Verde Units 1, 2 and 3. SCE's refusal to provide long term transmission service from the project would have effectively foreclosed the Southern California Cities from obtaining such a share. SCE was also competing with LADWP for a portion of the Salt River Project's ownership interest in the Palo Verde Units 1, 2, and 3. The end result was that LADWP acquired this ownership interest, and SCE, Anaheim and Riverside did not.

---

*/ P. 13, Appendix 16.

Transmission plans for Palo Verde Units 4 and 5 were never finalized. However, indications are that transmission arrangements may have been worked out to permit the Southern California cities to participate in those units, as noted by SCE's response*/ to staff questions:

> "As in the case of projects such as Kaiparowits and San Joaquin, for which Edison contemplated constructing some new facilities and providing transmission service over them to other participants, the optimum approach may have been for Edison or one of the other California participants alone to construct and own a No. 2 Palo Verde-Devers transmission line."

As the Kaiparowits, San Joaquin and Palo Verde Units 4 and 5 projects have all been cancelled, staff has no way of determining whether satisfactory transmission arrangements for the Cities would have indeed been worked out for these projects.

Transmission from the Northwest

SCE shares in the Pacific Northwest-Pacific Southwest Intertie with PG&E, SDG&E, LADWP and the Cities of Burbank, Glendale and Pasadena. Other cities in California do not share in the ownership or use of this transmission intertie. In a letter to the Assistant Attorney General**/ from counsel for the Cities of Anaheim and Riverside, the Cities allege that SCE's control of the intertie has among other things foreclosed the Cities from supply markets.

---

*/ P. 13, Appendix 16.

**/ October 25, 1978 letter to John H. Shenefield from Alan J. Roth, see Appendix 9.

To staff's knowledge, SCE's policies with respect to use of the present intertie has not changed since the San Onofre 2 and 3 construction permit antitrust review. Staff has concerns, however, with respect to the proposed upgrading of the intertie and the associated increase in SCE's control over power supply sources in the Northwest as a result of this upgrading.

At the time of the construction permit review of San Onofre 2 and 3, SCE had a 43% right in the A.C. part of the intertie (which was rated at 2,100 Mw) and a 50% right in the D.C. part of the intertie (which was rated at 1,440 Mw), representing a total of 1,663 Mw. SDG&E had a 7% right in the A.C. portion or 147 Mw.

LADWP, Glendale, Burbank, and Pasadena had 40%, 3.8%, 3.8%, and 2.4% rights respectively in the D. C. part of the tie, representing Mw values of 576, 55, 55 and 34, respectively. The other entities in Southern California had no rights in the A.C. or D.C. parts of the Northwest-Southwest Intertie.

The A.C. portions of the intertie have been increased from 2,100 Mw to 2,500 Mw mainly by means of operating controls, including insertion of braking resistors and the switching of series capacitors. An additional 200 Mw of capacity, up to a capacity of 2,700 Mw, can be obtained by uprating the series capacitors. The capacity of the A.C. part of the intertie can be further increased an additional 1,800 Mw by the addition of a third 500 Kv line from John Day (in northern Oregon) to Tesla (near San

Francisco) a distance of approximately 585 miles. 17/ Also, an upgrading of the D.C. portion of the Northwest-Southwest Intertie is being considered. The most favorable alternative for the D.C. upgrading appears to be an increase of capacity of 480 Mw, raising the total capacity from 1,440 Mw to 1,920 Mw, by increasing the voltage of the line from plus and minus 400 Kv to plus and minus 500 Kv.

Correspondence directed to the present owners of the Northwest-Southwest Intertie suggests that the above increases in capacity of 2,400 Mw on the A.C. part of the intertie and 480 Mw on the D.C. part of the intertie will be available only to the present owners of the intertie and will not be available to other electric utilities in Southern California.18/

Also being considered is a second D.C. line from the Pacific Northwest to Phoenix, Arizona. For this D.C. project, correspondence directed to non-participants as well as present participants in the existing D.C. tie suggests that entities in Southern California other than the present

---

17/ P. 3 of Pacific Intertie Uprating Task Force, Final Report, dated January 25, 1979. See Appendix 17.

18/ See Appendix 18. (August 20, 1976 letter from Hector J. Durocher to those indicated and June 29, 1979 from SCE to James L. Mulloy) Noticeably absent is any mention or mailing to non-owners.

intertie owners are being permitted to participate in this consideration.[19/] However, in view of the position that SCE took with respect to sharing with others transmission from Palo Verde 1, 2, and 3, the Southern California Cities may not be able to participate in a future Northwest to Arizona D.C. tie because there may be no way for the Cities to economically close this transmission link from Arizona to Southern California. A possibility exists, however for the smaller cities to join with LADWP and the combined group to install a separate 500 Kv line from Arizona without SCE participation.

The feasibility of the Northwest-Phoenix D.C. tie is still uncertain, and far in the future[20/] (not earlier than the late 1980's) whereas a significant increase in the capacity of the present Northwest-Southwest Intertie is not as remote (early 1980's).

In conclusion, the increase in capacity from 2,100 Mw to 2,500 Mw of the A.C. part of the Northwest-Southwest Intertie represents a change since the construction permit. Further increases in capacity, up to a total increase of 2,480 Mw, are anticipated. If electric utilities, other than the present participants, are foreclosed from participating in this capacity increase,

---

19/ See Appendix 19. (July 21, 1978 from Mr. Hector Durocher of BPA to a list of interested parties).

20/ See Appendix 20. (July 19, 1978 memorandum from Sterling Munro to George S. McIsaac).

this could be competitively significant. This would be particularly true with respect to the increase in capacity brought about by a third 500 Kv A.C. line. If additional transmission lines are considered as merely upgrading the present intertie, and therefore not available to non-participants, the continued exclusive control of the upgraded interties by the present participants could adversely affect the competitive situation.

Interruptible Transmission Service

In response to staff questions, Riverside describes a dispute between it and SCE with respect to interruptible transmission service.[21/] Anaheim similarly describes this dispute in its response to staff questions.[22/] The dispute centers on what obligations, if any, SCE has to provide interruptible transmission service under its 1972 Settlement Agreement with the Cities. Cities contend that, under the Settlement Agreement, SCE is required to use its best efforts to provide interruptible transmission service. SCE contends that it is not required to provide interruptible transmission service under the Settlement Agreement.

Based on staff's reading of the Settlement Agreement, staff believes that the interpretation of the Cities with regard to SCE's obligations under the Settlement Agreement is the correct one. Section 4.1.5 of the Settlement

---

21/ See Appendix 21, answer 2, of January 4, 1980, letter from Everett C. Rose to Argil Toalston.

22/ See Appendix 22. (January 8, 1980, letter from Gordon W. Hoyt to Argil Toalston).

Agreement states that SCE will use its best efforts to make mutually satisfactory arrangements to transmit City-owned power when a City requests specific service. This would appear to obligate SCE to at least use its best efforts to work-out a satisfactory interruptible transnmission schedule if that is what the City had requested.

Likewise, the San Onofre antitrust license conditions state that:

> "SCE shall use its best efforts to facilitate the transmission of bulk power over then existing transmission facilities outside its service area for such entities."*/

This condition does not limit the type of transmission service or the type of bulk power transmitted and consequently includes interruptible transmission service.

The Integrated Operation Agreement

The 1972 Settlement Agreement between SCE and the Cities of Anaheim, Riverside and Banning, and the San Onofre 2 & 3 antitrust license conditions set out broad principles for electrical system coordination between SCE and other entities in Southern California. Consistent with these broad principles, SCE has entered into Integrated Operation Agreements (IOAs) with Anaheim, Riverside, and Anza Electric Cooperative and is negotiating similar agreements with Azusa, Banning and Colton.23/

---

*/ License condition No. 2. (See Appendix 8).
23/ See Appendix 23 for Anaheim agreement.

The agreements provide for the dispatching of other's generation in conjunction with SCE's generation. They also provide for transmission service, partial requirement firm power service, non-firm energy and other types of capacity and energy exchanges.

The "Contract Energy" in the IOAs appears to serve as a combination of maintenance energy, emergency energy and economy energy. The pricing is on an incremental cost basis. The electric utility industry in general, prices emergency or maintenance energy on an incremental basis, whereas economy energy is generally priced, in contrast to that in the IOAs, on a cost-plus basis or split-the-savings basis. The participating parties, however, have agreed to the type of pricing for the "Contract Energy", and staff has no indication that any party was coerced into this type of an arrangement. In response*/ to a staff question, Riverside took no issue with the pricing of "Contract Energy." Further, that response states:

> "Thus, while Edison's activities with respect to Riverside raises a number of significant antitrust questions, it is the position of Riverside that these issues are being fully aired and litigated before other agencies, including the Federal Energy Regulatory Commission and in the Federal District Court. We would

---

*/ See Appendix 21. (January 4, 1980 letter from Everett C. Ross to Argil Toalston).

> again urge that action be taken by the NRC Staff to complete its review and grant the operating license application for the San Onofre Nuclear Generating tation Units 2 and 3."

A similar response */ was received from Anaheim.

SUMMARY AND CONCLUSION

During the construction permit review of San Onofre 2 and 3, the Attorney General's first advice letter did not identify any anticompetitive situation attributable to San Deigo Gas and Electric Company ("SDG&E") but specifically referred to actions taken and positions asserted by Southern California Edison ("SCE") as foreclosing its customers from bulk power supply alternatives. Presumably, in reaching a settlement agreement later with SCE, the Attorney General considered that this problem had been, or would be, resolved by the San Onofre license conditions.

Based on this operating license review of San Onofre, staff has some concern that the actions and positions taken by SCE with respect to transmission services are still, at least to a limited degree, foreclosing SCE's customers from bulk power supply alternatives. This represent a change, at least of some significance, with respect to the situation envisioned at the close of the San Onofre construction permit antitrust reviews. This

---

*/ See Appendix 22. (January 8, 1980 letter from Gordon W. Hoyt to Argil Toalston).

change appears to have been brought about principally by a trend toward development of bulk power supply alternatives outside of the SCE service area and, to a lesser extent, by SCE's interpretation of what was required under its license conditions.

Staff must decide as to whether these changes since the construction permit review are reasonably attributable to SCE and have significant antitrust implications that would likely warrant some Commission remedy at this operating license stage. In reaching this decision, staff takes note of the Attorney General's advice letters for San Joaquin, Palo Verde 1, 2, and 3, and Palo Verde 4 and 5; each of which found no reason to recommend a hearing with respect to SCE. We also note the letters of Riverside and Anaheim which state that the issues are being fully aired and litigated before other agencies including the FERC and District Court. Since Riverside and Anaheim are the entities that have been principally affected by SCE's transmission policies, Staff has concluded in this finding that there are no "significant changes" that would warrant a second antitrust review of SCE or SDG&E with respect to their San Onofre 2 and 3 license applications.