

AUG 26 1986

Mr. Dennis L. Farrar, Director
Nuclear Licensing
Commonwealth Edison Company
P.O. Box 767
Chicago, Illinois 60620

Re: Braidwood Station, Unit 1, Docket No. 50-456A; Antitrust Operating
License Review--No Significant Change Finding

Dear Mr. Farrar:

Pursuant to the antitrust review of the captioned nuclear unit, the Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant antitrust changes have occurred subsequent to the antitrust review at the construction permit stage.

This finding is subject to reevaluation if a member of the public requests same in response to publication of the finding in the Federal Register. A copy of the notice that is being transmitted to the Federal Register and a copy of the Staff Review pursuant to Unit 1 of the Braidwood Station are enclosed for your information.

Sincerely,

Jesse L. Funches, Director
Planning and Program Analysis Staff
Office of Nuclear Reactor Regulation

Enclosures:
As stated

Distribution
Docket File No. 50-456A
PRAB r/f & s/f
JFunches
LSolander
WLambe
BVogler, OGC
JStevens, PM
NRC PDR
LPDR

Ltr/to DFarrar/Braidwood

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NAME	: WLambe/mf	: LSolander	: JFunches	:	:	:	:
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BRAIDWOOD STATION, UNIT 1
OPERATING LICENSE REVIEW FOR SIGNIFICANT CHANGES

BRAIDWOOD STATION, UNIT 1
OPERATING LICENSE ANTITRUST ANALYSIS

A. INTRODUCTION

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of Operating License applications if significant changes in the licensee's activities or proposed activities have occurred since the construction permit antitrust review. Authority to make the significant change determination was delegated to the Director, Office of Nuclear Reactor Regulation (NRR) for reactors and to the Director, Office of Nuclear Material Safety and Safeguards (NMSS) for production facilities, as appropriate.

The Nuclear Regulatory Commission in a Memorandum and Order (CLI-80-28) dated June 30, 1980,¹ set forth three criteria upon which to base a "significant change" determination as follows:

- (1) the change or changes must have occurred since the construction permit review,
- (2) the change or changes must be attributable to activities or proposed activities of the licensee, and
- (3) the changed situation must have antitrust implications which would likely warrant a Commission remedy.

¹ 11 NRC 817, 824 (1980). See also 13 NRC 862 (1981).

The staff,² has reviewed the activities and proposed activities of the applicant, Commonwealth Edison Company (CECo), that have transpired since the previous review in connection with the operating license application for Byron, Unit 1, Docket 50-454A. It is the staff's conclusion that no "significant changes" have occurred subsequent to that review.

B. BACKGROUND

Due to the number of applications by CECO for construction permits and operating licenses, the staff and the Department of Justice have had several opportunities to review the applicant's activities.

The Justice Department provided the Commission with its views in connection with the construction permit applications of LaSalle in 1972, with regard to Byron and Braidwood in 1974, and for the Carroll County units in 1976. Additional reviews by the Department were conducted for the operating license applications for the LaSalle units in 1976, and for Byron, Unit 1 in 1983.

In reviewing the operating license application for Byron, Unit 1, the staff reviewed the applicant's activities and proposed activities since the Byron construction permit antitrust review, completed in 1974. The 1983 analysis examined the applicant's compliance with license conditions attached to the Byron and LaSalle construction permits as well as issues raised in court and regulatory proceedings by wholesale service customers served by the applicant.

At the time of the Byron, Unit 1 OL review, the City of Winnetka had petitioned the U.S. Court of Appeals for the District of Columbia for review of a Federal Energy Regulatory Commission (FERC) opinion. Since this matter

² "Staff" hereinafter refers to the Planning and Resource Analysis Branch of the Office of Nuclear Reactor Regulation and the Office of the General Counsel.

was a dispute involving a tariff and was under review both by the court and FERC, it was not considered to be a "significant change" in the applicant's activities. After consulting with the Department of Justice, the staff concluded that the changes that had occurred since the antitrust construction permit review did not represent "significant changes" requiring a further, and formal, antitrust review.

C. CHANGES SINCE THE BYRON UNIT 1 OPERATING LICENSE SIGNIFICANT CHANGE ANALYSIS

1. Residential Service

Following an order of the Illinois Commerce Commission of July 12, 1984 CECO changed its rate schedule in an effort to offer rates which more closely reflect the cost of providing residential service. One result of these changes has been to eliminate special end-use rate schedules, such as the residential solar assisted electric space heating and the residential solar assisted electric water heating schedules. To further reflect the full cost of providing electric service the differential between summer and non-summer rates was increased. Summer charges are now 1.45 times higher than non-summer charges for the first 400 kilowatt hours and 2.44 times higher for usage in excess of 400 kilowatt hours. The effect of these changes will cause customers to pay proportionately more during peak summer hours.

2. Commercial and Industrial Service

Rates applied to commercial and industrial customers have also been changed in order to better reflect the cost of this service. The minimum demand charge provisions of Rates 6 and 6L were eliminated. Also, the qualifying demand for time-of-day rates was reduced to 500 kw. These changes will allow more customers to be served under the time-of-day

rates by creating an incentive for customers to shift their on-peak useage to off-peak because the new rate reflects higher on-peak costs.

3. Wholesale Service to Municipalities

The antitrust concerns of several cities which are served at wholesale by CECo were analyzed in detail in the staff's review of the Byron Unit 1 OL application. Most of these matters were settled on October 2, 1984 when the Federal Energy Regulatory Commission accepted the joint agreement between the applicant and five cities. As part of the settlement, some of the increased charges in Rate 78 which became effective subject to refund on October 31, 1983 were refunded. The applicant paid refunds with interest to five municipalities on October 5, 1984.

On June 20, 1985, CECo and the Village of Winnetka filed an agreement with FERC which, if approved, would resolve all outstanding disputes between the applicant and Winnetka, including the matter before the Court of Appeals. The agreement provides for CECo to pay Winnetka \$375,000 to settle all outstanding claims. Further, the agreement provides that future transactions will be governed by an Interconnection Agreement dated May 7, 1985.

There have been no new wholesale customers added to the applicant's system since the previous antitrust review.

4. Activities to Sell Capacity

The applicant anticipates that the company's reserve capacity will be 3668 MW or 23.4 percent of the estimated net peak load of 15,700 MW in the summer of 1988 when Braidwood Unit 2 is fully operational. As a result of this relatively high percentage, no generating capacity is expected to be added after the completion of the Byron and Braidwood units and design work on the Carroll County nuclear units has stopped.

Additional nuclear capacity is not anticipated to be needed until the late 1990's.

In view of the future availability of nuclear power, the applicant has established a special committee to contact other companies in order to sell its excess capacity. Of the approximately 45 companies contacted by the applicant, 3 companies are actively engaged in discussions, while 9 companies are still considering their options. The remaining companies have expressed no further interest in capacity purchases.

D. ANALYSIS OF CHANGES SINCE THE CONSTRUCTION PERMIT REVIEW

The staff's analysis of changes since the construction permit review has disclosed no changes that would suggest anticompetitive behavior by CECO. The changes in electric rates and rate structures are the results of increasing production costs and the desires of regulatory agencies to change rate structures so as to promote conservation of energy and efficiencies in energy production. Moreover, CECO has responded to inquiries regarding the costs of participation in the Braidwood units and has actively sought participants.

E. SUMMARY AND CONCLUSION

Since the construction permit antitrust review of the Braidwood units in 1974 there have been subsequent reviews of the applicant's activities including antitrust reviews in 1976 for the Carroll County construction permit application and the LaSalle operating license application, and in 1983 for the Byron, Unit 1 operating license application. The Byron, Unit 1 review concluded that no significant changes had occurred in the applicant's activities up to that time, but noted that the City of Winnetka had petitioned the U.S. Court of Appeals for the District of Columbia for review of a Federal Energy Regulatory Commission (FERC) opinion.

Since that review the applicant and Winnetka have filed an agreement with FERC which, if approved by the Commission, would resolve all outstanding disputes between CECo and Winnetka.

Since the Byron, Unit 1 OL review, the changes in the company's activities have involved changes in rates and rate structure, both at the retail and wholesale level, which are the result of an order of the Illinois Commerce Commission and a settlement agreement filed with the Federal Energy Regulatory Commission. Further, the applicant has contacted several electric utility companies and has offered to share participation in the Braidwood nuclear units. Based on the NRC staff review, the applicant has not unreasonably restrained these utilities from further participation in the Braidwood units.

NUCLEAR REGULATORY COMMISSION
DOCKET NO. 50-456A
COMMONWEALTH EDISON COMPANY
NOTICE OF NO SIGNIFICANT ANTITRUST CHANGES
AND TIME FOR FILING REQUESTS FOR REEVALUATION

The Director of the Office of Nuclear Reactor Regulation has made a 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 construction permit review of Unit 1 of the Braidwood Station 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 to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Braidwood construction permits to Commonwealth Edison Company (CECO), the staffs of the Planning and Resource Analysis Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as 'staff' have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license (OL) stage of the application.

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"In reaching this conclusion, the staff considered the structure of the electric utility in Illinois, as well as events relevant to the Braidwood construction permit review and subsequent antitrust reviews of additional nuclear units owned by Commonwealth Edison Company. In addition, the staff has considered comments from interested parties in the state of Illinois and CECO concerning CECO's business relations with its customers and competitors.

"The conclusion of the staff's analysis is as follows:

'Since the construction permit antitrust review of the Braidwood units in 1974 there have been subsequent reviews of the applicant's activities including antitrust reviews in 1976 for the Carroll County construction permit application and the LaSalle operating license application, and in 1983 for the Byron, Unit 1 operating license application. The Byron, Unit 1 review concluded that no significant changes had occurred in the applicant's activities up to that time, but noted that the City of Winnetka had petitioned the U.S. Court of Appeals for the District of Columbia for review of a Federal Energy Regulatory Commission (FERC) opinion. Since that review the applicant and Winnetka have filed an agreement with FERC which, if approved by the Commission, would resolve all outstanding disputes between CECO and Winnetka.

'Since the Byron, Unit 1 OL review, the changes in the company's activities have involved changes in rates and rate structure, both at the retail and wholesale level, which are the result of an order of the Illinois Commerce Commission and a settlement agreement filed with the Federal Energy Regulatory Commission. Further, the applicant has contacted several electric utility companies and has offered to share participation in the Braidwood nuclear units. Based on the NRC staff review, the applicant has not unreasonably restrained these utilities from further participation in the Braidwood units.'

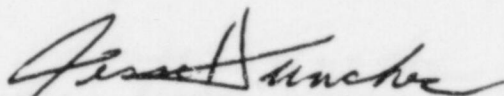
"Based upon the staff's analysis, it is my finding that there have been no significant changes in the licensee's activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit."

Signed on August 8, 1986, by Harold R. Denton, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within

30 days of the initial publication of this notice in the Federal Register. Requests for reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

FOR THE NUCLEAR REGULATORY COMMISSION

A handwritten signature in dark ink, appearing to read "Jesse L. Funches", written in a cursive style.

Jesse L. Funches, Director
Planning and Program Analysis Staff
Office of Nuclear Reactor Regulation