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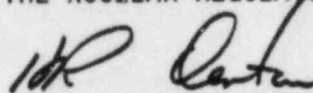
REEVALUATION AND AFFIRMATION OF NO
SIGNIFICANT CHANGE FINDING PURSUANT TO THE
BRAIDWOOD STATION UNIT 1 OPERATING LICENSE
ANTITRUST REVIEW

Notice is hereby given that the Illinois Municipal Electric Agency has requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Antitrust Change" pursuant to the operating license antitrust review of the Braidwood Station Unit 1. After further review by my staff, I have decided not to change my finding.

A copy of my finding, the request for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 29 day of October 1986.

FOR THE NUCLEAR REGULATORY COMMISSION



Harold R. Denton, Director
Office of Nuclear Reactor Regulation

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Director of Nuclear Reactor Regulation
September 15, 1986
Page 2

On August 8, 1986, Harold R. Denton, Director of the Office of Nuclear Reactor Regulation found that there have been no significant changes in the licensee's (Edison's) activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit. 51 Fed. Reg. 29350 (August 15, 1986). IMEA submits that such finding is in error and should be reevaluated.

II. THE BASIS FOR IMEA'S ALLEGATION OF SIGNIFICANT CHANGES WAS TOTALLY OVERLOOKED BY THE STAFF.

Although the staffs of the Planning and Resource Analysis Branch, Office Nuclear Reactor Regulation and the Office of General Counsel (staff), in concluding no significant changes have occurred, state that comments from interested parties in the state of Illinois were considered, staff's analysis is, at best, a grievous misconception of IMEA's comments. Staff summed up its analysis as follows:

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.

51 Fed. Reg. 29350. (Emphasis added) IMEA did not allege that Edison was unreasonably restraining other utilities from participation in the Braidwood units. Nor did the gist of IMEA's allegations center on changes in rates and rate structure which were the result of an order of the Illinois Commerce Commission and a settlement agreement filed with the Federal Energy Regulatory Commission. Rather, the focus of IMEA's allegations was on Edison's acts which had as their purpose the elimination of IMEA as a potential and actual competitor in the relevant electric power market and the unlawful denial of access to its transmission system. Edison's conduct, all of which has occurred since the antitrust review in connection with the

ZUCKERT, SCOUTT, RASENBERGER & JOHNSON

Director of Nuclear Reactor Regulation
September 15, 1986
Page 3

construction permit, was described in detail in IMEA's initial and reply comments and only will be summarized here. That conduct, however, was not referred to or discussed in staff's analysis.

Staff did not consider Edison predatory discriminatory pricing practices. Edison, in its efforts to eliminate IMEA as a competitor, reduced its rates to its wholesale customers to a level approximately 46% below that required to recover its cost of service to those customers. Edison refused to deal with IMEA and threatened to withdraw those offers of reduced rates if they were disclosed to IMEA. Those cities which elected to pursue alternate sources of power and energy were forced to pay monopoly rents to Edison until alternate arrangements for power and energy were completed. Furthermore, staff did not review Edison's acts of denying its customers access to lower priced power and energy by abusing its monopoly power over its transmission system, an essential facility. Edison has engaged in pricing policies for its transmission service that had only one objective: denial of transmission service and the elimination of lower-priced power and energy as alternative sources of supply for Edison's wholesale customers.

If the staff analysis had seriously considered those actions of Edison, it would have found that indeed significant changes have occurred since the completion of the previous antitrust review and that a hearing was necessary to determine whether Edison's activities under the license would create or maintain a situation inconsistent with the antitrust laws.

III. CONTRARY TO ESTABLISHED PRECEDENT, STAFF'S ANALYSIS FAILED TO CONSIDER EDISON'S ACTS IN THE CONTEXT OF THE BROAD SCOPE OF THE ANTITRUST LAWS.

The NRC's role in antitrust enforcement differs from standard judicial antitrust analysis, i.e. analysis that requires evidence of an actual or incipient antitrust violation. That standard has not been incorporated into the Atomic Energy Act. Alabama Power Co. v. Nuclear Regulatory Com'n., 692 F.2d, 1362 (11th Cir. 1983); cert. denied, 464 U.S. 816, 104 S.Ct. 72, 1983). Rather, as the court in Alabama Power Co. stated:

The NRC is to look only for 'reasonable probability' of violation. This command may result in the conditioning of licenses in anticipation of

Director of Nuclear Reactor Regulation
September 15, 1986
Page 4

situations which would not, if left to fruition, in fact violate any antitrust law. But Congress intended this broad inquiry using all available information to prevent infringement on the antitrust laws in the nuclear power field.

We also note that the Joint Committee Report did not limit the NRC's inquiry to probable contravention of the antitrust laws, but included 'or the policies clearly underlying these laws.' Here again, a traditional antitrust enforcement scheme is not envisioned, and a wider one is put in place.

Id. at 1368. The "reasonable probability" of violation can be based upon a forward look toward potential anticompetitive conduct. Id. at 1367. At the same time, the statutory language of § 105(c) directs the "NRC to take a careful look at the present -- and the past -- to see if an anticompetitive climate exists and to see if the applicant has acted in an anticompetitive manner." Id. at 1367-1368. Furthermore, the NRC is not to relax its antitrust responsibilities in favor of the Federal Energy Regulatory Commission, an agency whose regulatory scheme has a different purpose. See, The Toledo Edison Company (David Bessie Nuclear Power Station, Units 1, 2 and 3), ALAB-560, 10 NRC 265, 284 (1979).

Contrary to this precedent, staff's analysis adopted an extremely narrow interpretation of the NRC's antitrust responsibilities. Staff did not look for reasonable probability of violation. It considered only selective past conduct, not the totality of Edison's acts. And staff failed completely to take a forward look toward potential anticompetitive conduct. Staff basically only considered whether Edison was unreasonably restraining utilities from further participation in the Braidwood units, and ignored the significant changes in Edison's conduct. By concentrating on that activity, staff placed blinders upon itself. By taking those blinders off, Edison's predatory and discriminatory pricing policies and its unlawful denial of access to its transmission system come sharply into focus.

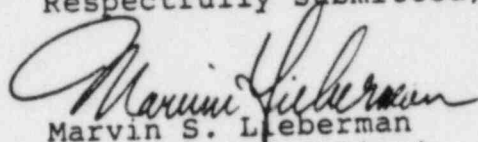
For the above reasons, IMEA requests a reevaluation of the finding that there have been no significant changes in the licensee's activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit; that upon reevaluation a finding be

ZUCKERT, SCOTT, RASENBERGER & JOHNSON

Director of Nuclear Reactor Regulation
September 15, 1986
Page 5

made that there have been such significant changes and that a hearing be held to determine whether Edison's activities under the license would create or maintain a situation inconsistent with the antitrust laws.

Respectfully submitted,



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Municipal Electric Agency

MSL:j

cc: Harold R. Denton, Director
Office of Nuclear Reactor Regulation
David M. Stahl, Esquire