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December 16, 1999

DOCKET NUMBER  
PROPOSED RULE PR 2450  
(64FR59671)

Annette Vietti-Cook, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001  
Attention: Rulemakings and Adjudications Staff.

Re: Antitrust Review Authority: Clarification, RIN 3150-AG38

Dear Madame Secretary:

I am writing to request a four-week extension of time to file comments on the rule changes that were proposed in the above-captioned matter, as published at 64 Fed. Reg. 59,671 (1999). The present deadline for filing comments is January 3, 2000, which is sixty days (plus a weekend) following publication of the notice in the Federal Register.

A comment deadline in early January would present problems for this firm in any year on account of the need to coordinate such comments with numerous clients whose holiday schedules make coordination difficult. One of our clients is the American Public Power Association, which must coordinate with its members, and therefore has similar concerns. The problems are compounded this year because of the focus on Y2K issues. There is strong reason to believe that others would have similar problems.

As the notice reflects, the purpose of the proposed action is to clarify the NRC's regulations to properly reflect the Commission's decision in *Kansas Gas and Electric Co.* (Wolf Creek Generating Station, Unit 1), CLI-99-19, 49 N.R.C. 441, 64 Fed. Reg. 33,916 (1999). The notice quotes the Commission's statement in *Wolf Creek* that "[n]ot one comma of the Commission's current regulations need be changed in the wake of a cessation of [antitrust] reviews." In light of the high visibility of the *Wolf Creek* decision and its publication in the *Federal Register*, there is no strong imperative that the proposed regulatory changes be made immediately and, indeed, the Commission would want to be able to consider informed comments of all interested commentators.

It is respectfully submitted that the proposed elimination of submission of antitrust information in connection with all license transfer applications raises serious concerns, even if one were to find no fault whatsoever with the *Wolf Creek* decision itself. The notice quotes the following passage from *Wolf Creek*:

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But for applications to transfer an existing operating license, there are other Section 105 purposes which could be served by the information. Such information could be useful, for example, in determining the fate of any existing antitrust license conditions relative to the transferred license, as well as for purposes of the Commission's Section 105b responsibility to report to the Attorney General any information which appears to or tends to indicate a violation of the antitrust laws.

However, the notice of proposed rule nowhere addresses these considerations.

*Wolf Creek* affirmed that "[w]hether or not the Commission conducts a 'significant changes' review of post-operating license transfer applications, it still must consider the fate of any existing antitrust license conditions under the transferred license." The Commission further noted that "[t]he license conditions on their face, the nature of the license transfer, and perhaps the competitive situation as well, would need to be considered to determine what action were warranted in a given case." In light of this ruling, we are greatly concerned that the Proposed Rule contains no discussion whatever of the propriety of retaining the existing informational filing requirement, either in whole or in part, in connection with applications to transfer nuclear plant licenses that contain antitrust conditions.

In order that this issue may receive the attention that it merits, and to allow the full development of other concerns raised by the proposed rule, we respectfully request a four-week extension of time to file comments, until January 31, 2000 on behalf of our clients.

Respectfully submitted,



Ben Finkelstein  
Counsel for the American Public Power  
Association and other public systems

BF:bf

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