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# Standard Review Plan on Antitrust Reviews

## Final Report

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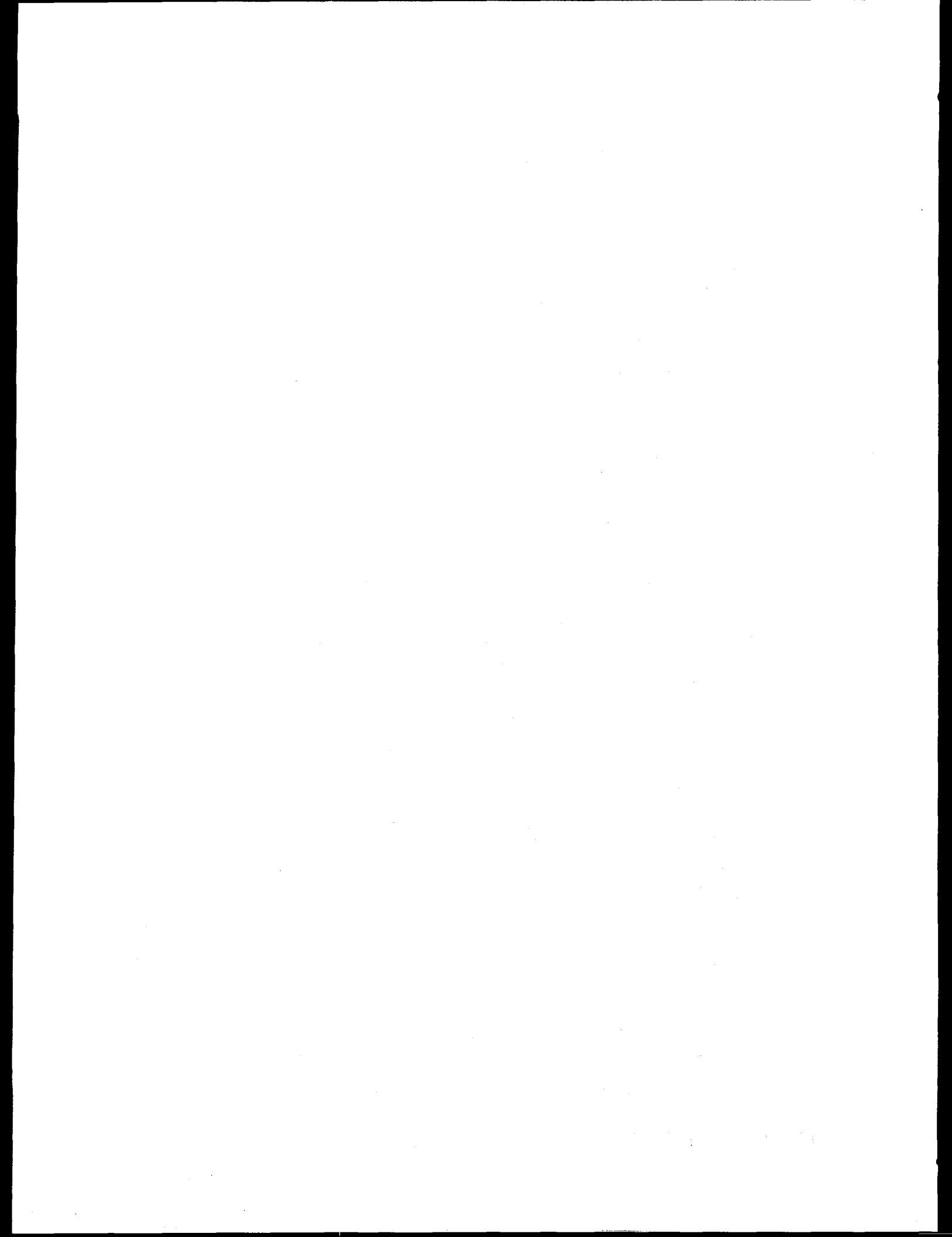
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## STANDARD REVIEW PLAN FOR ANTITRUST REVIEWS

### ABSTRACT

This standard review plan describes the procedures used by NRC staff to implement the antitrust review and enforcement provisions in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended (the Act), and replaces NUREG-0970. These procedures are principally derived from the Commission's Rules and Regulations in 10 CFR Sections 2.101, 2.102, Part 2-Appendix A, Section X, 50.33a, 50.80, 50.90, and 52.77. These procedures set forth the steps and criteria the staff uses in antitrust reviews of construction permit applications, operating license applications, combined construction permit/operating license applications, and applications for approval of the transfer of construction permits, operating licenses, and combined licenses. In addition, the procedures describe how the staff enforces compliance with antitrust conditions appended to licenses.



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undertaken.

Section 4 discusses the Commission's antitrust enforcement responsibilities. In fulfilling such responsibilities, the Commission may: (1) suspend or revoke a license or take other actions deemed necessary in the event a licensee is found by a court of competent jurisdiction, or any government agency having jurisdiction, to have violated the antitrust laws (Section 105a of the Act); (2) report to the Attorney General any information indicating that a licensee appears to have violated the antitrust laws (Section 105b of the Act); and (3) enforce Commission license conditions (Section 186a of the Act). In addition, 10 CFR 2.206 provides a mechanism for parties to bring formal complaints to the attention of the Director of the Office of Nuclear Reactor Regulation when the parties believe that licensees are not complying with license conditions.

In summary, this standard review plan (1) guides the Commission's antitrust staff in carrying out the Commission's antitrust responsibilities under the Atomic Energy Act; and (2) explains how antitrust considerations fit into the overall licensing process.

## ABBREVIATIONS

Act	Atomic Energy Act of 1954, as amended
CFR	Code of Federal Regulations
COL	Combined Construction Permit/Operating License
CP	construction permit
DOE	Department of Energy
DOJ	Department of Justice
EIA	Energy Information Agency
FERC	Federal Energy Regulatory Commission
NARUC	National Association of Regulatory Utility Commissioners
NRC	Nuclear Regulatory Commission
NRR	Office of Nuclear Reactor Regulation
OGC	Office of the General Counsel
OL	operating license
SEC	Securities and Exchange Commission
SRP	Standard Review Plan



## STANDARD REVIEW PLAN FOR ANTITRUST REVIEWS

### 1 INTRODUCTION

#### 1.1 Purpose

The Atomic Energy Act of 1954, as amended (the Act), declared that "the development, use, and control of atomic energy shall be directed so as to... strengthen free competition in private enterprise." In 1970, antitrust amendments to Section 105c of the Act were enacted requiring the Commission to conduct antitrust reviews of applications for construction permits and operating licenses under Section 103 of the Act, with certain limitations.

This standard review plan (SRP) describes the procedures by which the NRC staff judges the antitrust implications associated with the construction and operation of nuclear power plants. This SRP also outlines procedures for reviewing new joint owners, transfers to new owners or operators, and requests for the enforcement of NRC antitrust license conditions.

The NRC has begun to work with the Federal Energy Regulatory Commission (FERC), the Securities and Exchange Commission (SEC), and the Department of Justice (DOJ) to develop methods by which the NRC can minimize the duplication of effort on antitrust issues, and still carry out its statutory responsibilities. For the same reason (to minimize duplication), the NRC is also supporting legislation to eliminate its review mandate.

The Office of Nuclear Reactor Regulation, with the advice of the Office of General Counsel, is responsible for conducting the antitrust reviews.

The Act requires the Commission to conduct antitrust reviews of all applicants for licenses under Section 103 that have submitted nuclear power plant construction permit (CP) applications after Section 105 was enacted. Plants that received a CP (or in some cases had filed an application for a CP) before Section 105 was enacted in December 1970, were grandfathered. The staff has also determined that no antitrust review is required for license renewals unless there are significant changes in licensee activities or plant modifications which would constitute a new or substantially different facility. The NRC does not expect that any plants will have to make such modifications as a prerequisite for license renewal approval. Thus, antitrust review of the renewal of an operating license is unlikely.

The following power reactors were licensed under Section 104b (DPR licenses): Arkansas 1, Beaver Valley 1, Big Rock Point, Brown's Ferry 1, 2, & 3, Brunswick 1 & 2, Calvert Cliffs 1 & 2, Cook 1 & 2, Cooper, Crystal River, Diablo Canyon 1 & 2 (which have antitrust license conditions), Dresden 2 & 3, Duane Arnold, FitzPatrick, Fort Calhoun, Ginna, Haddam Neck, Hatch 1, Indian Point 2 & 3, Kewaunee, Maine Yankee, Millstone 1 & 2, Monticello, Nine Mile 1, Oconee 1, 2, & 3, Oyster Creek, Palisades, Peach Bottom 2 & 3, Pilgrim, Point Beach 1 & 2, Prairie Island 1 & 2, Quad Cities 1 & 2, Salem 1 & 2, Sequoyah 1 & 2, Saint Lucie 1, Surry 1 & 2, Three Mile Island 1, Turkey Point 3 & 4, Vermont Yankee, and Zion 1 & 2.

## 2.2 Required Information

### 2.2.1 10 CFR Information

In accordance with 10 CFR 2.101 and 50.33a of the Commission's Rules, the information required by the Attorney General is submitted separately at least 9 months, but not more than 36 months, before any other part of the license application.

The complete information described in Appendix L of 10 CFR Part 50 is generally required only for applicants whose generating capacity exceeds 1400 MW. Applicants with 1400 MW or less of generating capacity may file an affidavit setting forth the facts about their generating capacity. Then, unless otherwise requested, applicants with capacity of 200 to 1400 MW need only respond to item 9 of Appendix L; applicants with less than 200 MW of capacity (*de minimis* applicants) need not respond to any of the questions unless specifically requested to do so by the staff.

### 2.2.2 Regulatory Guide 9.2

In addition to the information requested by the Attorney General, the NRC staff collects information pursuant to Regulatory Guide 9.2, "Information Needed by the NRC Staff in Connection With Its Antitrust Review of Construction Permit Applications for Nuclear Power Plants."

### 2.2.3 Response to Inquiries from the Attorney General

The Attorney General will normally request "third party" information from municipal electric utilities, rural electric cooperatives, and other utilities located in and near the applicant's service area about their competitive relationships with the applicant. The applicant identifies these utilities in response to item 9 of the Appendix L information it provides. Copies of the responses to these inquiries by the Attorney General should be obtained and used as part of the NRC review.

### 2.2.4 Published Information

To evaluate the applicant's market power, the reviewer will use information from (1) Forms 1 and 12, collected by the Federal Energy Regulatory Commission (FERC), (2) the Energy Information Agency (EIA) of the Department of Energy (DOE), and (3) other sources such as the *Directory of Electric Utilities* and, *Moody's Public Utility Manual*, thereby obtaining information on the applicants generating capacity and the transmission lines it owns within its service area and on its plans to increase its generating capacity and add transmission lines. It may also be necessary for the reviewer to survey the smaller electric utilities in the relevant areas by telephone, by mail, or in person, since statistics about such utilities may not be available in public sources.

### 2.2.5 Field Review

After examining the Appendix L submittal and other relevant information, the reviewer may contact individuals in or near the area the applicant serves to substantiate the responses and documents already examined. The reviewer may interview system planners and other officials affiliated with

the applicant. In addition, officials from various municipal, cooperative, and privately owned utilities in or adjoining the applicant's service or planning area may be interviewed.

The interviews will focus on the interutility relationships among the various utilities in order to determine the competitive situation and whether the issuance of a license will create or maintain a situation inconsistent with the antitrust laws. The reviewer will be interested in how the utilities plan for their generation and transmission requirements, how and to what degree they coordinate, and how they plan to integrate the power from the nuclear facility to meet the electrical demands of their customers.

To determine if the applicant has abused its market power, the reviewer will ascertain whether the applicant has attempted to fix prices or exclude competition in its relevant geographic and product market.

#### 2.2.6 Applicant's Service Contracts and Agreements

The reviewer will analyze the applicant's service contracts and agreements for unnecessarily restrictive provisions. Such restrictive provisions, while not limited to the following examples, may (1) limit customers from selling surplus power other than to the applicant, (2) include ratchet provisions (which require a customer to keep paying a higher charge for electric power and energy beyond the amount delivered) (3) limit the sale of power at wholesale to certain customers, or (4) prevent certain electric utilities from membership or participation in planning and coordinating groups. In addition, any pattern of applicant refusals to serve will be evaluated.

#### 2.3 Acceptance Review and Notice of Receipt of Antitrust Information

Before the Appendix L information is sent to the Attorney General, the reviewer makes certain that the information is complete and therefore acceptable for docketing. If the application is acceptable, the reviewer will ask the licensing project manager to publish a notice in the *Federal Register* and in trade journals, informing the public that the antitrust information has been received and is available for inspection in the NRC Public Document Room in Washington, D.C., and in local public document rooms. The notice invites interested parties to express their views within 60 days of the date of publication. All responses to this notice will be sent to the Attorney General. The reviewer will also notify the Office of the General Counsel (OGC) that the application has been accepted for docketing. The information is then submitted to the Attorney General with a request for antitrust advice.

#### 2.4 Staff Review

While the Attorney General's review is in progress, the NRC reviewer should prepare a preliminary analysis. This will be the basis of the staff's position. The staff may support the views of the Department of Justice (DOJ) on whether a hearing is necessary, or the staff may disagree with DOJ or independently derive its own position. Similarly, when DOJ advises that a hearing is needed, the staff will participate in any hearing and will determine independently what issues to press in the hearings.

##### 2.4.1 Criteria for Review

The proper scope of antitrust review depends upon the circumstances of each case. The reviewer should employ market analyses focusing on the area served by the applicant. From the nature of the electric bulk power supply industry itself, the reviewer will have a general idea of the types of products and services supplied by the applicant. Products relevant to each individual case (e.g., baseload power, transmission access, reserve sharing, coordination planning) will vary depending on the extent of competition in the area and the needs of surrounding entities engaged in the bulk power services market.

Depending on the availability of various products and services within the relevant geographic area (i.e., depending on whether there are entry barriers), the reviewer will analyze the geographic market to determine what the relevant market is for review purposes. The relationship of the nuclear facility to the applicant's total system or power pool should be evaluated in every case. The reviewer can then assess whether the applicant has market power and if so, whether it has abused its market power.

#### 2.4.2 Analysis of Market Power

The reviewer must determine if the applicant has the market power to withhold access to nuclear power or abuse its market power in other ways and thereby maintain or create a competitive advantage through use of the nuclear facility. In determining if the applicant has market power, the reviewer must ascertain how much control the applicant has over certain services in a specific geographic area. Although the reviewer must consider each application on its own merits and take circumstances into account, the reviewer may use the following cases as guides in determining what markets are relevant and should be analyzed:

- *Consumers Power Co.* (Midland Plant, Units 1 and 2), ALAB-452, 6 NRC 892 (1977)
- *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), ALAB-646, 13 NRC 1027 (1981)
- *Toledo Edison Co., et al.* (Davis-Besse Nuclear Power Station, Units 1, 2, and 3), ALAB-560, 10 NRC 265 (1979)
- *Alabama Power Co.* (Joseph M. Farley Nuclear Plant, Units 1 and 2), LBP-77-24, 5 NRC 804 (1977), and LBP-77-41, 5 NRC 1482 (1977)

In analyzing antitrust implications, the reviewer should consider, among other things, the applicant's relevant market strengths and weaknesses, transmission access and availability, and the system's capacity for change. (Detailed issues for study can be found in *Farley*, LBP-77-24, 5 NRC 804.

#### 2.4.3 Analysis of Anticompetitive Behavior

The fact that an applicant has market power does not necessarily mean that the applicant's conduct is inconsistent with the antitrust laws or that the applicant will abuse its market power. To assess the probability that the applicant will abuse its market power, the reviewer must examine the applicant's behavior in the relevant market and compare it with competitors' behavior in the same market. In other words, the reviewer must determine if it appears reasonably probable that the activities under the license would

create or maintain a situation inconsistent with the antitrust laws. Case examples the reviewer can refer to include *Midland* and *Davis-Besse*. In *Midland*, the Appeal Board found that the applicant's refusals to wheel power, or to coordinate with smaller utilities, and its exclusion of utilities from the Michigan power pool to be anticompetitive conduct and abuses of market power. In *Davis-Besse*, practices such as territorial allocations, attempts to fix prices, refusals to deal, and group boycotts were considered practices that increased the applicant's dominance and violated the antitrust laws.

#### 2.4.4 Nexus

Proof of a situation inconsistent with antitrust laws or policies is only one of the prerequisites for relief under Section 105c of the Act. The second is a demonstration that the activities under the license would create or maintain the anticompetitive situation. Thus, a nexus, or connection, between an applicant's activities under the license and the anticompetitive situation is required. The *Farley* and *Davis-Besse* decisions show the reviewer what to consider in ascertaining whether a sufficient nexus exists between the activities under the license and an anticompetitive situation.

#### 2.4.5 Settlement of Antitrust Issues

Section 2.759 of the Commission's Rules of Practice states that the public interest may be served through settlement of particular issues in a proceeding or through settlement of an entire proceeding. Settlement, by way of agreement on antitrust license conditions, may be negotiated at any step in the review process. The negotiations may involve the Department of Justice, NRC staff, applicants, and, in some cases, members of the public, and smaller electric systems as intervenors or potential intervenors.

Negotiations with the applicant begin before the Attorney General issues an advice letter. The Department of Justice usually invites the NRC staff to join the negotiations in the beginning and invite other interested parties, such as potential intervenors, later. If the negotiations are successful, the Attorney General will advise the Commission that no hearing is necessary if certain conditions, which have been agreed to by the applicant, are attached to the license. If a settlement is not reached before the Attorney General's advice is rendered, negotiations are encouraged during the prehearing stages and even after the hearing has begun.

the proposed new facility operator. However, new operators will be treated for purposes of antitrust review as new owners unless such a license condition is appended to the operating license.

### 3.4 Required Information

All applicants pursuant to Section 50.80 are to submit the information required by 50.33a. In making its threshold antitrust determination, the staff shall make use of all available public information and any records from other related proceedings. The information required by Regulatory Guide 9.3, "Information Needed by the AEC Regulatory Staff in Connection With Its Antitrust Review of Operating License Applications for Nuclear Power Plants," concerns changes in licensee activities and will be considered by the staff.

#### 3.4.1 Antitrust Files

The antitrust files pertaining to the initial construction permit or COL review of the application form the baseline from which changes are measured. In addition, CP or COL reviews of the same applicant may have been conducted in connection with other nuclear plants before the CP or COL review of the nuclear plant in question, thereby increasing the staff's general information about a particular applicant.

#### 3.4.2 Federal Energy Regulatory Commission Files

The docket files at the FERC generally contain information about the applicant's activities in the bulk power services market and should be selectively reviewed by the staff.

#### 3.4.3 Field Investigation

In addition to obtaining information from the applicant, the NRC staff may contact selected nonapplicants concerning competitive relationships with the applicant.

### 3.5 Notice of Receipt of Antitrust Information

At the CP or COL stage of review, the staff seeks information for its antitrust review from persons or entities affected by the activities of prospective owners or operators of the facility being licensed. The staff seeks similar information in the transfer review process and will publish in the *Federal Register* notice of receipt of antitrust information or notice of receipt of the proposed transfer application when adequate antitrust information is included with the application. The notice shall provide for a period of public comment of 30 days from publication of the notice in the *Federal Register*.

To be accepted by the staff, public comments must address the antitrust aspects of the application. The staff uses the comments to determine whether the proposed transfer may significantly worsen the competitive situation.

### 3.6 Staff Analysis

The reviewer, along with OGC, prepares a written analysis of the competitive situation. This analysis will consider, among other things, the extent to which potential changes in the relevant markets are attributable to the applicant, the antitrust implications of the changes, and whether they would likely warrant a Commission remedy.

This threshold analysis is then forwarded to the Department of Justice (DOJ) for review and comment. Although there is no statutory limitation on the period in which DOJ's comments may be provided to the staff (such as during the construction permit review phase), the reviewer should try to ensure that the DOJ renders its advice in a timely manner. Upon receipt and review of DOJ's comments, a threshold antitrust finding is prepared for signature by the Director of the Office of Nuclear Reactor Regulation.

#### 3.6.1 Parallel Reviews

In its review of mergers, acquisitions, spinoffs or other owner or operator changes involving licensees which are concurrently being reviewed by other Federal regulatory bodies (e.g., FERC, SEC, DOJ), the staff tries to use the information and the records of these proceedings in conducting its own independent threshold antitrust analysis.

### 3.7 Director's Finding

If the threshold antitrust analysis by the Director of the Office of Nuclear Reactor Regulation results in a Finding of Significant Change, the staff will forward the finding to the Attorney General and request advice as to whether an antitrust hearing should be held as a result of the finding. When the staff receives the Attorney General's advice, the staff will request publication of the Attorney General's advice in the *Federal Register* to give interested parties an opportunity to intervene or request a hearing.

If the Director of the Office of Nuclear Reactor Regulation makes a Finding of No Significant Changes, the finding is published in the *Federal Register* with a statement that any request for reevaluation of the finding shall be submitted within 30 days of the publication of the notice. Copies of the finding are also sent to the Commission, the applicant, and any person who submitted comments in response to the notice of receipt of antitrust information in the *Federal Register*. Normally, if no requests for reevaluation are received within the 30-day period, the finding becomes the NRC's final determination. Requests for reevaluation of the Finding of No Significant Changes may be accepted after the date when the Director's Finding becomes final but before the transfer application is approved only if they contain new facts or information about events of antitrust significance that have occurred since the Director's Finding, or information that could not reasonably have been submitted before then.

The staff will review all requests for reevaluation and make a determination whether the events described in the request represent new information that would affect the initial Director's Finding. If the staff finds that the request contains new information that was not considered in the initial Director's Finding, the Director will reevaluate the initial finding.

If, after reevaluating the finding, the staff determines that there has been no significant change, the Director of the Office of Nuclear Reactor Regulation will deny the request and publish a notice reaffirming the Finding of No Significant Changes in the *Federal Register*. Copies of the reaffirmation finding are also sent to the requestor, the applicant, and the Commission. The finding becomes the final NRC decision 30 days after publication in the *Federal Register* unless the Commission exercises its right to conduct a *sua sponte* review.



*Power and Light Co.* (St. Lucie Plant, Unit No. 1, Turkey Point Plant, Units No. 3 and 4), ALAB-428, 6 NRC 221 (1977), the Appeal Board affirmed the decision of the Licensing Board, and the Commission declined to review the Appeal Board decision. *Florida Power and Light Co.*, CLI-77-26, 6 NRC 538 (1977). However, the Commission ordered the staff to promptly refer to the Attorney General the allegations of the Florida cities, as well as any related information it had suggesting that the licensee has violated or tended to violate the antitrust laws in utilizing special nuclear material or atomic energy. In accordance with this Order, the staff will, in similar situations in the future, refer such matters, with an account of the circumstances to the Attorney General, emphasizing that the staff has not determined whether the actions of the licensee (or applicant) are inconsistent with the antitrust laws.

#### 4.2.3 Section 186a

Section 186a gives the Commission authority to revoke licenses. In its June 15, 1977, Memorandum and Order concerning the South Texas Project, the Commission referred to Section 186 of the Act as follows:

Section 186 gives the Commission authority to initiate a post-licensing enforcement proceeding in the event of violation of a specific antitrust licensing condition. For like reasons we would not be limited to mere reference to the Attorney General if a license applicant has falsified pertinent antitrust review information or had otherwise obtained an unconditioned license by some sort of fraud or concealment. . . .

*Houston Lighting & Power Co.* (South Texas Project, Unit Nos. 1 and 2), CLI-77-13, 5 NRC 1303 (1977).

No further guidelines have been established for enforcing antitrust license conditions. The staff follows the actual wording of the license conditions in enforcing such conditions.

If a license has been obtained on the basis of false information, the staff will take appropriate action to correct the situation; to make restoration (as far as possible) to those that may have been harmed because of the false information; and, when appropriate, to impose civil penalties on the licensee or issue orders to modify, suspend, or revoke the license in question.

### 4.3 Enforcement of Antitrust License Conditions

#### 4.3.1 Section 10 CFR 2.206 Petitions

A petition can be submitted in accordance with 10 CFR 2.206. The petitioner must specify the action requested and set forth the facts or conditions that constitute the basis for the request. Upon receipt of the petition, the reviewer will coordinate with the Office of the General Counsel in preparing the following within 30 days:

- (1) a *Federal Register* notice to be signed by the Director of the Office of Nuclear Reactor Regulation;
- (2) a written acknowledgment to the petitioner, including a copy of the *Federal Register* notice;

- (3) a letter to the licensee or licensees against which the petition is filed, including a copy of the petition and a copy of the *Federal Register* notice; and
- (4) a letter to the Attorney General, including a copy of the petition and a copy of the *Federal Register* notice.

In addition, the reviewer will begin an investigation of the petition. The licensee may be required to respond to the petition pursuant to 10 CFR 50.54(f) and Section 182 of the Act. In response to the petition, the licensee may also voluntarily submit additional information that the reviewer should consider. The Director of the Office of Nuclear Reactor Regulation will inform the petitioner within a reasonable time whether the petition is granted or denied.

#### 4.3.2 Compliance Investigations

Most compliance activities center on whether the applicant has refused in some way to share the output of its nuclear facility and/or to provide certain types of power supply services prescribed by the antitrust license conditions.

A reviewer conducting a Section 2.206 compliance investigation ordinarily uses written questionnaires, telephone contacts, and field surveys to determine the following:

- (1) which antitrust laws (for Sections 105a or 105b matters) and which antitrust conditions are involved;
- (2) the extent to which the alleged violation depends on the interpretation of the antitrust laws or antitrust license conditions;
- (3) the effect of and the reasons for the alleged violation;
- (4) whether the alleged violation was willful; and
- (5) what remedial actions must be taken.

On the basis of the investigation, the staff will recommend (1) that the complaint or allegation has merit, (2) that a Notice of Violation be issued, or (3) that negotiations be pursued, followed by a Notice of Violation if the negotiations are unsuccessful.

#### 4.3.3 Denial of Petition

If the staff investigation determines that a petition received under 10 CFR 2.206 is without merit, a Director's Decision and *Federal Register* notice to that effect will be prepared and issued by the Director of the Office of Nuclear Reactor Regulation. The Office of the Secretary, the licensee against which the complaint was lodged, and the petitioner will be provided a copy of the Director's Decision. The Director's Decision is subject to the Commission's review on its own motion under 10 CFR 2.206(c).

#### 4.3.4 Notice of Violation

If the staff investigation determines that a violation has occurred, a Notice of Violation and a Director's Decision in accordance with 10 CFR 2.201 will be

prepared by the reviewer in conjunction with the Office of the General Counsel and issued by the Director of the Office of Nuclear Reactor Regulation. The notice and decision will be sent to the licensee and the petitioner. Imposition of civil penalties may be considered in accordance with 10 CFR 2.205 and Section 234 of the Act.

#### The Response

The licensee's response to the Notice of Violation determines the course of the subsequent proceedings. If the licensee agrees to take the necessary steps to comply with its license requirements, the staff will ensure that the compliance steps are carried out expeditiously. If the licensee does not agree to take the steps the staff considers necessary to resolve the matter, or if the licensee unreasonably delays implementing such actions, the staff may move to issue an Order to modify, suspend, or revoke the license. The staff may also impose civil penalties in accordance with 10 CFR 2.205 and Section 234 of the Act.

#### 4.3.5 Order To Modify, Suspend, or Revoke a License

An Order is prepared by the reviewer, in conjunction with the Office of the General Counsel, and issued by the Director of the Office of Nuclear Reactor Regulation in accordance with 10 CFR 2.202. The Order states the following:

- (1) the violations with which the licensee is charged or other conditions warranting an Order;
- (2) the action proposed by the Order; and
- (3) the licensee's requirements and procedural rights in responding to the Order.

The Order is published in the *Federal Register*, and copies are mailed to the licensee and other affected parties.

#### The Response

If the licensee demands a hearing, the hearing process is initiated.<sup>2</sup> If the licensee consents to the entry of an Order in substantially the form proposed in the Order, the Order is issued by the Director of the Office of Nuclear Reactor Regulation. If the licensee consents to the Order To Modify a License or does not respond within the time allotted, the license is amended as indicated. Thereafter, the reviewer simply monitors the licensee's compliance with the Order.

#### 4.3.6 Civil Penalties

The Director of the Office of Nuclear Reactor Regulation (NRR) can propose imposition of a civil penalty by issuing a Notice of Violation and Proposed

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<sup>2</sup> The hearing could result in a decision by the Atomic Safety and Licensing Board or an Administrative Law Judge to absolve the licensee of charges or to order the licensee to take the actions prescribed. An Order is appealable.

Imposition of Civil Penalty prepared by the reviewer in consultation with the Office of the General Counsel, as required by 10 CFR 2.205. The Notice of Violation specifies the date (or dates), and the nature of the alleged act or omission with which the licensee is charged; describes the circumstances; states the facts; cites the particular provision or provisions of the Act, license, regulations, or Order allegedly violated; and gives the amount of each penalty the Director of NRR proposes to impose. Within the period prescribed in the notice, the licensee may either pay the proposed penalty or answer the notice. If the licensee requests remission or mitigation of the proposed penalty, the staff will consider the reasons proffered and will either withdraw the proposed penalty or issue an Order imposing the civil penalty as originally proposed or in a mitigated amount. If the licensee fails to respond to the notice, the reviewer will prepare and the Director of NRR will issue an Order imposing the civil penalty as proposed. The licensee may pay the penalty or may request a hearing on the Order imposing a civil penalty within the period prescribed in the Order.

If the licensee fails to pay the penalty or demand a hearing within the prescribed period, the Commission may refer the matter to the Attorney General for collection. Continuing violations could subject the licensee to further civil penalties or to other sanctions, such as suspension or revocation of its license.

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The Nuclear Regulatory Commission is issuing this Standard Review Plan to describe the procedure used to implement the antitrust review and enforcement process prescribed in Sections 105 and 186 of the Atomic Energy Act of 1954, as amended. This SRP reflects current regulations and policy, and will be updated to reflect changes in NRC regulations.

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