West Virginia.[8] In short, the WVHCA has provided no argument against entry of the proposed Final Judgment and does not object to its entry. Consequently, the WVHCA's comment does not support disapproving the proposed Final Judgment.

Even if the Court were to consider the applicability of the state action doctrine, the WVHCA's comment does not demonstrate that the doctrine should apply in this case. With regard to the first part of the state-action test, the comment discusses the WVHCA's powers over West Virginia's CON program. (WVHCA Comment, pp. 8–10). But the comment does not discuss whether those powers allow the WVHCA to authorize market-allocation agreements between private parties such as the ones challenged in the Complaint. In fact, the WVHCA's CON powers do not allow it to authorize such agreements.[9] Rather the West Virginia legislature empowered the WVHCA to administer West Virginia's CON program only according to legislatively established procedures, consisting principally of granting or denying CONs to firms wishing to compete.[10] Because the West Virginia legislature did not empower the WVHCA to authorize private market-allocation agreements, the defendants' cancer and open-heart agreements do not qualify for state-action immunity.

With regard to the second part of the state-action test, the comment states that the WVHCA ''clearly has on-going supervision of West Virginia acute care hospitals'' through West Virginia's CON program and regulation of hospital rates for non-governmental payors. (WVHCA Comment, p. 10). However, the active-supervision requirement of the state-action doctrine requires that the State actively supervise and exercise ultimate control over the challenged anticompetitive conduct.[11] So the relevant question for determining whether state-action immunity exists is not whether the WVHCA actively supervises some aspects of hospital regulation in West Virginia, but whether the WVHCA is empowered to supervise and has actively supervised the defendants' agreements.

The WVHCA does not have such powers and has not actively supervised the defendants' agreements. The West Virginia legislature has not empowered the WVHCA to require parties to private agreements to maintain, alter, or abandon their agreements. Thus, the WVHCA has no power to exercise active supervision or control over private agreements such as the cancer and open-heart agreements. Moreover, the WVHCA has not purported to actively supervise the cancer and open-heart agreements, as it did not (1) develop a factual record concerning the initial or ongoing nature and effect of the agreements, (2) issue a written decision approving the agreements, or (3) assess whether the agreements further criteria established by the West Virginia legislatures.[12]

The WVHCA's rate-regulation responsibilities do not satisfy the active-supervision requirement because the challenged anticompetitive conduct in this matter is not the prices charged by the hospitals to non-governmental payors, but rather the terms of the cancer and open-heart agreements. the WVHCA's rice regulation activities do not directly address market-allocation issues or the potential anticompetitive effects of such allocations as rate regulation may fail to ensure that the hospitals charge rates equal to those rates that would have prevailed in a competitive market and fails to address decreases in quality of service, innovation, and consumer choice that result from an agreement not to compete.

The WVHCA comment also does not address the fact that the defendants' agreements allocated markets for cancer and cardiac surgery in the three Virginia counties. As the WVHCA is not vested with any power concerning matters in the Commonwealth of Virginia, the powers and actions of the WVHCA cannot create state-action immunity for an agreement not to complete in Virginia.

IV. Conclusion

After careful consideration of the WVHCA comment, the United States still concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is, therefore, in the public interest. Pursuant to Section 16(d) of the Tunney Act, the United States is submitting the public comments and its Response to the **Federal Register** for publication. After the comments and its Response are published in the **Federal Register**, the United States will move this court to enter the proposed Final Judgment.

Dated: June ____, 2005

Respectfully submitted,

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[8] The question of state-action immunity may not properly be before the Court. State-action immunity is essentially an affirmative defense with the party claiming state-action immunity bearing the burden of proof in establishing the defense. *Ticor Title,* 504 U.S. at 625; *town of Hallie* v. *City of Eau Claire,* 471 U.S. 34, 37–39 (1985); *Yeager's Fuel* v. *Pennsylvania Power & Light,* 22 F.3d 1260, 1267 (3d Cir. 1994); *Nugget Hydroelectric, L.P.* v. *Pacific Gas & Elec. Co.,* 981 F.2d 429, 434 (9th Cir. 1992). In the present matter, the defendants have chosen not to assert a state-action defense but instead to stipulate that the Court may enter the proposed Final Judgement.

[9] *See* W. Va. Code § 16–2D–1 *et seq.*, W. Va. Code St. R. § 65–7–1 *et seq.,* W. Va. Code § 16–29b–1 *et seq.*

[10] W. Va. Code § 16–2D–1 *et seq.*, W. Va. Code St. R. § 65–7–1 *et seq.*, W. Va. Code § 16–29B–1 *et seq. See also* CIS, pp. 8–10.

[11] *Midcal*, 445 U.S. at 105, *Patrick* v. *Burget*, 486 U.S. 94, 100–101 (1988).

[12] *See FTC* v. *Ticor Title Ins. Co.*, 504 U.S. 621, 637–639 (1992).

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 70 FR 19508 and one comment was received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of

NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Comment: On April 13, 2005, we published in the **Federal Register** (70 FR 19508) a 60-day notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending June 13, 2005. One comment was received from the public notice. The comment came from B. Sachau of Floram Park, NJ, via e-mail on April 18, 2005. Ms. Sachau objected to the Fellowships program, but had no specific suggestions for altering the data collection.

Response: NSF believes that because the comment does not pertain to the collection of information or the required forms for which NSF is seeking OMB approval, NSF is proceeding with the clearance request.

Title of Collection: Fellowship Applications and Award Forms.

OMB Approval Number: 3145–0023.

Type of Request: Intent to seek approval to extend without revision an information collection for three years.

Abstract: Section 10 of the National Science Foundation Act of 1950 (42 U.S.C. 1861 *et seq.*), as amended, states that ''The Foundation is authorized to award, within the limits of funds made available * * * scholarships and graduate fellowships for scientific study or scientific work in the mathematical physical, medical, biological, engineering, social, and other sciences at appropriate nonprofit American or nonprofit foreign institutions selected by the recipient of such aid, for stated periods of time.''

The Foundation Fellowship Programs are designed to meet the following objectives:

- To assure that some of the Nation's most talented students in the sciences obtain the education necessary to become creative and productive scientific researchers.
- To train or upgrade advanced scientific personnel to enhance their abilities as teachers and researchers.
- To promote graduate education in the sciences, mathematics, and engineering at institutions that have traditionally served ethnic minorities.
- To encourage pursuit of advanced science degrees by students who are members of ethnic groups traditionally under-represented in the Nation's advanced science personnel pool.

The list of fellowship award programs sponsored by the Foundation may be found via FastLane through the NSF Web site: *http://www.fastlane.nsf.gov.*

Estimate of Burden: These are annual award programs with application deadlines varying according to the fellowship program. Public burden may also vary according to program, however it is estimated that each submission is averaged to be 12 hours per respondent.

Respondents: Individuals.

Estimated Number of Responses: 5,000.

Estimated Total Annual Burden on Respondents: 60,000 hours.

Frequency of Responses: Annually.

Dated: July 7, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

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BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company; Trojan Independent Spent Fuel Storage Installation; Notice of Docketing of Materials License No. SNM–2509; Amendment Application

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: License amendment.

FOR FURTHER INFORMATION CONTACT: Jill S. Caverly, Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–6699; fax number: (301) 415–8555; e-mail: *jsc1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

By letter dated May 23, 2005, Portland General Electric Company (PGEC) submitted an application to the U.S. Nuclear Regulatory Commission (NRC or Commission), in accordance with Title 10 of the Code of Federal Regulations (10 CFR) 72.48(c)(2) and 10 CFR 72.56, requesting an amendment of the Trojan Independent Spent Fuel Storage Installation (ISFSI) license for the ISFSI located in Columbia County, Oregon. PGEC proposes to revise the designated controlled area at the ISFSI such that the boundary would be moved from 300 meters from the edge of the storage pad to 200 meters from the edge of the storage pad.

This application was docketed under 10 CFR part 72; the ISFSI Docket No. is 72–17. Upon approval of the Commission, the Trojan ISFSI License, No. SNM–2509, Safety Analysis would be amended to allow this action.

The Commission may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) regarding the proposed amendment or, if a determination is made that the proposed amendment does not present a genuine issue as to whether public health and safety will be significantly affected, take immediate action on the proposed amendment in accordance with 10 CFR 72.46(b)(2) and provide notice of the action taken and an opportunity for interested persons to request a hearing on whether the action should be rescinded or modified.

For further details with respect to this amendment, see the application dated May 23, 2005, which is publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). The NRC maintains ADAMS, which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.