



ASSISTANT ATTORNEY GENERAL
ANTITRUST DIVISION

United States Department of Justice

WASHINGTON, D.C. 20530

SEP 5 1979

Howard K. Shapar, Esquire
Executive Legal Director
Nuclear Regulatory Commission
Washington, D. C. 20555

Re: Texas Utilities Generating Company,
Comanche Peak Steam Electric Station,
Units 1 and 2, NRC Docket Nos. 50-445A
and 50-446A

Dear Mr. Shapar:

You have requested our further advice pursuant to Section 105c of the Atomic Energy Act of 1954, as amended, with regard to the participation by the Texas Municipal Power Agency (TMPA) in the Comanche Peak Steam Electric Station, Units 1 and 2, NRC Docket Nos. 50-445A and 50-446A.

The Comanche Peak Steam Electric Station will consist of two units, each rated at 1150 megawatts. The station is being built and will be operated by Texas Utilities Generating Company (TUGCO), a subsidiary of Texas Utilities Company (TU). 1/ By the terms of the agreement between TUGCO and TMPA, TMPA will secure a 6.2 percent ownership interest, or 72 MW in each unit.

TMPA is an agency established in 1975 pursuant to Texas law, and it consists of four Texas municipalities engaged in the generation, transmission, and distribution of electric power. TMPA was formed so that municipal systems with electric generation in Texas could join together to build new generation and to use their existing generation more effectively. The present members of TMPA are the Cities of Bryan, Denton, Garland and Greenville.

1/ The designation "TU" comprises the Texas Utilities Company and its various operating and service subsidiary companies including Dallas Power and Light Company, Texas Electric Service Company, and Texas Power and Light Company, each of which is a joint owner of the Texas Utilities Generating Company (TUGCO).

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By letter to you dated August 1, 1978, the Department advised the Nuclear Regulatory Commission (NRC) that an antitrust hearing would be necessary in reference to the operating license application of TUGCO. That antitrust hearing, currently in the final stages of discovery, is scheduled to begin in February of 1980. The basis for the Department's recommendation that an antitrust hearing be conducted on the Comanche Peak operating license was that TU had combined with other utilities in Texas and agreed to disconnect from any other electrical utility that commenced operation in interstate commerce. In light of TU's dominant position in Texas, the fact that it had disconnected from other electric utilities in 1976 when those utilities went into interstate commerce, and in view of changed circumstances in the electric utility markets in Texas, as set forth in my letter to you dated February 21, 1978, regarding the South Texas Project, NRC Docket Nos. 50-498A and 50-499A, the Department concluded that an antitrust hearing was necessary.

Between 1976 and 1978 TMPA entered into two agreements with Texas Power and Light Company (TP&L), a TU subsidiary, whereby TP&L agreed to supply ready economy energy and interruptible off-peak economy energy to TMPA. On January 2, 1979, TMPA entered into two additional contracts with TU subsidiaries: the Comanche Peak Ownership Agreement and a transmission agreement. All of the foregoing contractual agreements contain restrictions which, in effect, foreclose TMPA from interconnecting with and engaging in the buying and selling of power or energy with electric utilities that operate in interstate commerce. It is TU's "intrastate only" policy and practice which is the subject of the present Comanche Peak antitrust hearing. Resolution of the antitrust issues in that hearing will necessarily resolve any antitrust questions raised by these restrictions in the contractual agreements between TMPA and TU subsidiaries. TMPA has agreed to be bound by the outcome of the present Comanche Peak antitrust hearing, including the resolution of the intrastate only restrictions in its contracts with TU subsidiaries (See attached letter).

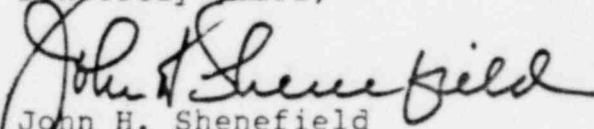
Our investigation of TMPA's application to participate in the Comanche Peak Steam Electric Station did, however, uncover the existence of an agreement entered into in 1973 between the City of Garland (Garland) and TP&L. This agreement effected a territorial division of retail marketing areas within Garland, a market jointly served by Garland and TP&L. In 1978 the Texas Public Utilities Commission jointly certified this market area to Garland and TP&L.

This agreement continues to operate at the present time, and, in fact, an exchange of some of the allocated marketing areas between Garland and TP&L occurred in 1977.

The Department believes that a purely local agreement between a municipality and an investor-owned electrical utility operating under franchise granted by the municipality to divide retail marketing areas within the municipality's limits and which does not bear a significant relationship to competition in the generation or transmission of electric power at the wholesale level ordinarily does not form the basis for initiating an antitrust hearing under Section 105c. This is not to say, however, that such agreements should not be scrutinized by the NRC where relevant to other antitrust concerns. It is the Department's belief that the antitrust consequences, if any, stemming from such purely local agreements on the retail level would be more appropriately dealt with by state utility commissions or under state or federal antitrust legislation than by the NRC. Indeed, the Department is examining this agreement to determine whether further action is appropriate under the federal antitrust laws.

In light of the attached letter referenced above, whereby the members of TMPA have agreed to be bound by the outcome of the present Comanche Peak antitrust hearing, the Department believes that an antitrust hearing on the application of TMPA to participate in the Comanche Peak units is not necessary.

Sincerely yours,


John H. Shenefield
Assistant Attorney General
Antitrust Division

Enclosure

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