

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
HOUSTON LIGHTING AND POWER)	
COMPANY, et al. (South Texas))	Docket Nos. 50-498A
Project, Unit Nos. 1 and 2))	50-499A
)	
TEXAS UTILITIES GENERATING)	
COMPANY, et al. (Comanche)	Docket Nos. 50-445A
Peak Steam Electric Station,))	50-446A
Unit Nos. 1 and 2))	

DEPARTMENT OF JUSTICE'S RESPONSE TO HOUSTON LIGHTING &
POWER COMPANY JANUARY 3, 1980 REQUEST FOR CONFERENCE CALL

The Department of Justice ("Department") has no objection to Houston Lighting & Power Company's ("HL&P") request for a conference call to discuss any issue in these proceedings. The Department, however, strongly objects to HL&P's unfounded allegations to support this request. 1/

First, HL&P now claims it has been denied the "basic antitrust contentions" and "specific nature of its (the Department's) theory of violation of or inconsistency with the antitrust laws". The Department's specific antitrust claims were revealed to HL&P almost three years ago in the Department's January 25, 1977, advice letter. 2/

1/ All the Department's pleadings on this issue were appropriately filed. Its December 14, 1979 Motion was filed pursuant to §2.740(b) and its December 26, 1979 Response was filed pursuant to a telephone call from Chairman Miller's secretary to Susan Cyphert on December 21, 1979.

2/ Exhibit A

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Second, the Department has repeatedly stated it is working on and will provide HL&P with a supplemental response to HL&P's First Set of Interrogatories by February 1, 1980. Much of this response will deal with the Department's economic analysis of this proceeding to date. 1/ The Department is not aware of any requirement that the Department present economic testimony to the Licensing Board. The Department has, however, engaged Dr. Gordon T. C. Taylor to analyze the markets in this case and review discovery so that he may be able to testify about the effect on competition in the markets he determines to be relevant. HL&P's argument that Dr. Taylor must now commit himself to conclusions about these matters is analogous to a critic being asked to review a film after only seeing a preview. The Department anticipates that Dr. Taylor will have the substantial portion of his analysis and review of the evidence completed by the time he is deposed again in March. HL&P has had discovery of the work he completed as of the date of his deposition in October. To the extent that he has completed any additional work which is responsive to HL&P's First Set of Interrogatories, the Department will reveal this in our updated response on February 1, 1980.

1/ This work, however, has been increasingly hampered by the need to respond to HL&P's motions. The modest extension requested by the Department is reasonable in view of the ongoing deposition schedule (Exhibit B) and should be granted.

Finally, the Department is amazed by HL&P's claim that it has somehow been denied discovery which would prejudice it at trial. HL&P has had the same opportunity to conduct discovery in this case as have all the other parties, however if it believes it will need additional time to conduct discovery after the end of February it should so move the Board. 1/

The Department urges the Board to deny HL&P's November 30, 1979 Motion regarding its First Set of Interrogatories and grant the short extension of time requested by the Department to provide supplemental responses to HL&P's First Set of Interrogatories and to answer HL&P's Third Set of Interrogatories.

Respectfully submitted,

Susan Braden Cyphert
Susan Braden Cyphert

Nancy Luque
Nancy Luque

Washington, D. C.
January 4, 1980

Attorneys
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(202-724-6667)

1/ HL&P states in its Response to the Department's Request for an Extension of Time to February 1, 1980 to Answer HL&P's Third Set of Interrogatories, filed on December 18, 1979 and due on January 2, 1980, that this will be too late "to permit Houston to effectively conduct further discovery...".

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CO., et al. (South Texas)	50-499A
Project, Units 1 and 2))	
)	
TEXAS UTILITIES GENERATING)	Docket Nos. 50-445A
COMPANY (Comanche Peak)	50-446A
Steam Electric Station,)	
Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Department of Justice Response to Houston Lighting & Power Company January 3, 1980 Request for Conference Call has been made on the following parties listed hereto this 4th day of January 1980, by depositing copies thereof in the United States mail, first class, postage prepaid.

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Department of Justice

EXHIBIT A

JAN 25 1977

Howard E. Chapar, Esquire
Executive Legal Director
U.S. Nuclear Regulatory Commission
Washington, D. C. 20545

Re: Houston Lighting and Power Company,
South Texas Project, Units 1 and 2
NRC Docket Nos. 50-498A and 50-499A

Dear Mr. Chapar:

This is in reference to your letter of August 3, 1976 in which you request advice as to whether there are any compelling circumstances presented by certain allegations made by Central Power and Light Company (CP&L) which warrant an antitrust review prior to the filing of an application for an operating license for the South Texas Project.

The Department has previously submitted antitrust advice to your Commission regarding applications for the South Texas Project and two other nuclear power plants planned for Texas, Allen's Creek Nuclear Generating Station, Units 1 and 2, NRC Docket Nos. 50-466A and 50-467A, and Comanche Peak Steam Electric Station, Units 1 and 2, NRC Docket Nos. 50-445A and 50-446A. We determined that the opportunity for ownership participation in the nuclear units was being made available to interested smaller electric utilities in the area and that membership in the Texas Interconnected System (TIS), the medium through which utilities in Texas engaged in coordination with one another to obtain economic and reliability benefits, would likewise not be restricted -- and we did not find it necessary to recommend antitrust hearings on any of these applications.

A significant change in the operations of electric utilities in Texas has occurred, however, since the Department last rendered antitrust advice concerning the South Texas Project. Prior to May, 1976, most of the Texas systems interconnected and coordinated with one another to their satisfaction in TIS,

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which was exclusively an intrastate system; none of these utilities operated interconnected with an electric utility outside Texas so as to be subject to the jurisdiction of the Federal Power Commission (FPC), and interconnection contracts with one another were conditioned specifically to preclude interstate connections. In the absence of complaints from any source, the Department had expressed no view as to the legality or propriety of this policy. Then, in May, 1976, two principal members of TIS, CP&L and West Texas Utilities (WTU), commenced to operate in interstate commerce. EL&P and the Texas Utilities (TU) systems, acting pursuant to the contractual conditions noted above, immediately opened their electrical connections with CP&L, WTU and other Texas systems which were connected with CP&L and WTU. While reconnection for "emergency" purposes without FPC jurisdiction attaching has been authorized by the FPC, the ties have remained open and the former TIS has now been replaced by two mutually exclusive systems.

Central Power & Light has alleged that this situation substantially impairs its ability to produce competitively priced power and also that its participation in the South Texas Project will be jeopardized. Houston Lighting and Power, on the other hand, contends that it acted unilaterally, without anticompetitive purpose, to preserve its status as an intrastate utility not subject to FPC jurisdiction, that its action will have no anticompetitive effect, and that CP&L's participation in the South Texas Project will not be adversely affected.

We need not decide the ultimate validity of CP&L's contentions or EL&P's responses to conclude that the present situation in Texas -- with restrictions on interutility coordination resulting from the division of the utilities in the state into two groups, premised on intrastate and interstate operation respectively, with TIS eliminated as a coordinating vehicle, and with questions raised as to the viability of planned participation in the nuclear units -- warrants an antitrust hearing. This situation and the interrelationship of EL&P and TU in it may also require reexamination of license applications for the Comanche Peak and Allens Creek nuclear plants, although we understand no questions have yet been raised with your Commission regarding those applications. In connection with the South Texas Project, however, the Department notes that, on September 9, 1976, an Atomic Safety and Licensing Board granted CP&L's petition to intervene and for an antitrust hearing.

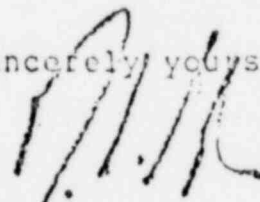
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A hearing to determine the antitrust consequences of this situation could appropriately explore the extent to which coordinating opportunities of smaller electric systems in the area, including participation in nuclear generation, may be foreclosed. Of concern in this regard should be not only the continued viability of the South Texas Project as a joint venture, but also the feasibility of (and limitations on) smaller system participation in future nuclear units principally loaded by HL&P and the TU systems. The situation's impact on other planned or possible joint arrangements would be relevant as well. For example, it appears Brazos Electric Power Cooperative may be foreclosed from jointly constructing a planned major lignite-fueled generating facility with two other Texas electric cooperatives (who are now operating interstate as a result of their interconnections with CP&L) if Brazos wishes to continue to obtain the benefits of its coordination with TU. Other issues would include to what degree changes in the availability and price of natural gas for boiler fuel have increased the importance of nuclear generation and coordination to the smaller Texas systems and, ultimately, the effect of the present situation on their power supply costs and their ability to compete.

The Department can see no reason why the hearing should not proceed at this time, rather than awaiting the filing of the application for an operating license. The substantive issues appear ripe for determination and the possibility of licensing delay later on would be minimized. Finally, resolution of these issues now could permit the affected utilities to move forward with the planning and development of their power supply systems with greater certainty regarding the generation and coordination options that will be available to them -- a most desirable result, given the prevailing long lead times required to develop new facilities and bring them into service.

Sincerely yours,



DONALD I. BAKER
Assistant Attorney General
Antitrust Division

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EXHIBIT B

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JANUARY 1980

ACTIVITY SCHEDULE

SUN.	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT.
NOTES:	DECEMBER 1979 SUN MON TUE WED THU FRI SAT	1 NEW YEAR'S DAY HOLIDAY	2	3 T.R. Locke [Wichita Falls] 9:30 am	4	5
	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29
6	7 Milford(Seymour) 9:30 am[Wichita Falls]	8 1) Phelps[City of Vernon]9:30 am [Wichita Falls] 2)Phillips[Dallas] (postponed)	9 1)Borchelt[Corpus Christi](2)Oscar Castillon 9 am[Dallas](3)Robert Corder 1:30 pm[Dallas] (4)Paul Helyer[Wichita Falls] 9:30am	10 1)Edward Watson 9 am[Dallas] (2)Marsh-Electra 9:30 am[Wichita Falls] (3) Autry } (4) Chalker } °Corpus Christi	11 1)J.E. Farrington 9 am[Dallas]	12
13	14	15 1)Robert Earhart 9am[Houston] (2)Harrison[San Antonio]9:30 am	16 Jack Greenwade 1:30 pm[Houston] Segrest[Waco]	17 Thomas Standish 9 am[Houston]	18 Sweatman & Woodson in Austin J. Monahan[Waco, Texas] 9:30 am	19
20	21 1)Doug Wright 9:30 am[Tulsa] (2)Oprea[Houston]	22 1)J.W. Atkins(?) 9 am(2)A.M. Smith 1:30pm [Beaumont] (3)Frank Meyer[Tulsa]	23 1)J. Bondurant 9 am[Beaumont] (2)Steve Beard 9 am [Dallas](3)Henry Manning 2 pm to be scheduled in Dallas this week)	24 A. Sprawls 9 am [Beaumont]	25 N. Lee 9 am [Beaumont]	26
27	28 Jordan[Houston]	29 McCuistion 9 am[Houston]	30	31 1)Turner 9 am [Houston] (2) Tri-County[Ft. Worth] 1:30 pm	FEBRUARY SUN MON TUE WED THU FRI SAT 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29	NOTES:

JANUARY 1980