

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of: )  
 )  
Texas Utilities Generating ) Docket Nos. 50-445A  
Company ) 50-446A  
 )  
(Comanche Peak Steam Electric )  
Station, Units 1 and 2) )

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ANSWER OF TEX-LA ELECTRIC COOPERATIVE, INC.,  
TO TUGCO'S MOTION TO DISMISS CSW AS A  
PARTY INTERVENOR OR, IN THE ALTERNATIVE, FOR  
SUMMARY DISPOSITION

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The Texas Utilities Generating Company, et al. ("TUGCO"), motion seeks to dismiss Central and South West Corporation ("CSW") as a party in this case or, in the alternative, the motion seeks "summary disposition in favor of TUGCO and against CSW . . . ." As to the effect of the motion and the federal district court case of West Texas Utilities Company and Central Power & Light Company v. Texas Electric Service Company and Houston Lighting & Power Company, \_\_\_ F.Supp. \_\_\_ (N.D. Tex. 1979), No. C.A. 3-76-0633-F, on Tex-La, TUGCO appears to be uncertain because the motion says: "The district court decision may be conclusive against Tex-La and the Department of Justice . . . ." (Motion at 23.) (Emphasis added.) Although TUGCO is uncertain as to the effect of the court decision on Tex-La, we have no such hesitation. The court case has no effect on Tex-La since the cooperatives in East Texas were not parties to the court case and the factual situation between Tex-La and the applicant varies substantially from the factual situation between CSW

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and the applicant. Because of the dissimilarity of parties and dissimilarity of facts, the district court judgment does not operate as res judicata. Parklane Hosiery Co. v. Shore, \_\_\_ U.S. \_\_\_, 58 L.Ed. 2d 552, 47 U.S.L.W. 4079 (January 9, 1979).

The motion makes an outrageous accusation that Tex-La and its member cooperatives are "a surrogate" of Central and South West. The motion contends that this proceeding should not "go forward" because to do so would "allow CSW to accomplish through a surrogate what it cannot accomplish directly." (Motion at 23.) The facts involving Tex-La's future plans for bulk power supply discredit the surrogate allegation and show that the Texas cooperatives are not bound by the district court decision.

Tex-La and its Texas member cooperatives 1/ are purchasers of power at wholesale from Texas Power & Light Company ("TP&L"), Gulf States Utilities Company ("GSU"), Community Public Service Company ("CPS"), the Southwestern Electric Power Company ("SWEPCO"), and the Southwestern Power Administration ("SWPA"), an agency of the Department of Energy. Tex-La and its Texas member cooperatives purchase in excess of 650,000 Kw of power and energy annually from these power suppliers. In 1977, TP&L alone supplied Tex-La and its

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1/ Cherokee County Electric Cooperative, Deep East Texas Electric Cooperative, Fannin County Electric Cooperative, Farmers Electric Cooperative, Grayson-Collin Electric Cooperative, Houston County Electric Cooperative, Hunt-Collin Electric Cooperative, Jasper-Newton Electric Cooperative, Kaufman County Electric Cooperative, Lamar County Electric Cooperative, New Era Electric Cooperative, Rusk County Electric Cooperative, Sam Houston Electric Cooperative, Wood County Electric Cooperative, Bowie-Cass Electric Cooperative, Upshur Rural Electric Cooperative, Panola-Harrison Electric Cooperative.

members with approximately 225,000 Kw of firm power. The Texas member cooperatives of Tex-La currently serve more than 220,000 consumers within the State of Texas. With these existing responsibilities and the load growth expected to be encountered in the near future, the interest to be protected here is to ensure that Tex-La and its members are not restricted in any way from access to bulk power supplies from interstate or intrastate sources.

The intrastate-only mode of operation, if allowed to continue, will have a greater impact in the future on the Texas cooperatives than at present because of the organizational transition underway by the cooperatives. The Texas cooperatives are beginning to leave the distribution-only phase of power supply, and are entering into generation and transmission functions. Thus, the cooperatives have formed or are forming three generating and transmission cooperative corporations as follows: Two of the Tex-La members, Sam Houston Electric Cooperative and Jasper-Newton Electric Cooperative, are members of the Sam Rayburn Dam Electric Cooperative, a generation and transmission cooperative ("G&T"), which is near the end of negotiations with Gulf States Utilities Company to own a portion of River Bend No. 1, a nuclear generating station, and Nelson No. 6, a coal-fired generating station. The second G&T is North East Texas Electric Cooperative, which is comprised of six distribution cooperatives, 2/ who are negotiating with the Southwestern Electric

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2/ Bowie-Cass Electric Cooperative, Panola-Harrison Electric Cooperative, Deep East Texas Electric Cooperative, Wood County Electric Cooperative, Upshur Rural Electric Cooperative, and Rusk County Electric Cooperative. Three of these cooperatives--Deep East, Wood County, and Rusk County--also purchase power from TP&L.

Power Company for co-ownership of the Pirkey Plant, a coal-fired generating station. The third G&T to be formed by the Tex-La members will be known as the Tex-La Electric Cooperative of Texas, and will be comprised mainly of those distribution cooperatives who purchase power only from TP&L. The intrastate-only mode of operation bars these three G&T cooperatives from coordinating and will prevent them in the future from exchanging power, with the result being that the three G&Ts will operate as isolated islands within the service territory of Texas Power & Light Company. In addition, the cooperatives whose wholesale power supply is provided solely by TP&L will be unable to receive out-of-state alternative bulk power supplies and therefore will continue to be solely dependent on TP&L. Thus, the members of that new G&T will be prevented, for example, from receiving federal hydroelectric power from the Southwestern Power Administration system, and, therefore, unable to exercise their preference rights under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s. In short, as a consequence of the intrastate-only mode of operation, the Texas cooperatives would be barred from lowering power costs through exchanges of power among the three generating and transmission cooperatives, and from receiving lower cost power from out-of-state sources. This is a harm unique to the cooperatives and a harm which certainly cannot justify a lable of surrogate.

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WHEREFORE, for the reasons stated above, and for the reasons set forth in the pleadings of Staff and the Department of Justice, the TUGCO motion should be denied.

Respectfully submitted,

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April 23, 1979

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Tex-La Electric Cooperative, Inc., to TUGCO's Motion to Dismiss CSW as a Party Intervenor or, in the Alternative, for Summary Disposition has been served on each of the following persons by deposit in the United States mail, first class postage prepaid, this 23rd day of April 1979.

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