

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

11/18/81

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

APPLICATION OF TEXAS UTILITIES
GENERATING COMPANY, ET AL. FOR AN
OPERATING LICENSE FOR COMANCHE
PEAK STEAM ELECTRIC STATION
UNITS #1 AND #2 (CPSES)

Docket Nos. 50-445
and 50-446

STATEMENT OF MATERIAL FACTS AS TO WHICH
THERE ARE GENUINE ISSUES TO BE HEARD

1. All of the Applicants with the exception of TMPA must depend on rate increases to assure their ability to pay their respective shares of the costs associated with the operation and decommissioning of Comanche Peak.
2. The following items in the Staff's Statement of Material Facts As to Which There Is No Genuine Issue To Be Heard, attached to its Motion for Summary Disposition, are questionable, erroneous, or no longer valid, as demonstrated below:

2, 5, 6, 8, 9, 10, and 11 -- Applicants' and NRC Staff's interpretation of the laws and regulations of the State of Texas and the Texas Public Utility Commission is skewed, thus distorting the bases for the Staff's conclusion that there are no genuine issues as to any fact material to this contention, that there are no factual issues requiring adjudication upon a hearing, and that the Staff is entitled to a decision in its favor, granting summary disposition of Contention 25, as a matter of law.

3 -- There is a question not addressed by Staff as to whether or not the member cities of TMPA have the authority and ability to pull out of Comanche Peak altogether, as the City of Austin voted to do on 11/3/81 regarding the South Texas Nuclear Project.

4 -- According to sworn testimony in the 1980 DP&L rate hearings, the capacity factors of 50, 60 and 70 percent cited by Staff are not accurate.

2. (continued):

4 -- The assumption that the first year of commercial operation will be 1983 for Unit 1 and 1985 for Unit 2 is no longer valid. This also means that the Applicants' estimate of the first 7 years of operating costs is no longer valid.

2, 4, 5, 6, 8, 9, 10, and 11 -- It is obvious that the NRC Staff has relied primarily, if not entirely, upon the financial information submitted by the Applicants. Although it is stated in item 5 that "Applicants plan to recover all costs of operation through revenues derived from customers in system-wide sales of electricity" and item 8 states that "Applicants have indicated that they believe they will be able to recover decommissioning costs in the rate process," there is no indication that the Staff has made any attempt to independently investigate rate hearing documents or data which have direct bearing on Applicants' ability to carry out their plans and beliefs.

2, 5, 6, 8, 9, 10, and 11 -- According to sworn testimony in rate hearings of the three primary Applicants (Dallas Power & Light, Texas Power & Light, and Texas Electric Service Co.), including the sworn testimony of the Treasurers of DP&L, TP&L and TESCO, the financial condition of the three companies has been deteriorating for the past several years and is continuing to deteriorate.

8, 9, 10, and 11 -- As demonstrated herein, at least one of the primary Applicants has not made even a minimal effort to plan in advance for financing decommissioning and nuclear waste disposal costs, has instead opposed CASE's efforts to see that such costs are planned for in advance and included as subjects in rate hearings, and in fact doesn't even want to talk about such costs in rate hearings.

8, 9, 10, and 11 -- At least one of the primary Applicants, as well as the regulatory authorities in rate hearings have not, and will not, see that costs such as decommissioning and nuclear waste disposal are planned for and included as subjects in rate hearings and decisions absent a specific order to Applicants from the Board.

To summarize, CASE questions Staff's item 3 and Staff's items 2, 4, 5, 6, 8, 9, 10 and 11 are erroneous or no longer valid.

3. Lack of candor on the part of at least one of the primary Applicants may damage its future ability to obtain rate increases.

4. There is no basis to assume that cities with original jurisdiction or the Texas Public Utility Commission will rubberstamp whatever rate increases Applicants request.
5. There are other indications of financial problems which have not yet been examined.
6. A vicious circle of inflated demand figures, which produces overcapacity, which generates inadequate revenues due to lack of need, which produces more rate increases, which causes more energy conservation because of increased costs of electricity, which decreases revenues even further, which necessitates more and more rate increases, ad infinitum -- coupled with the double-barrelled effect of very high construction costs with Construction Work in Progress (CWIP) in the rate base plus high fuel costs due to continued use of natural gas resulting in more and higher rate increases -- is creating a situation which will lead to financial disaster for ratepayers, stockholders, and utilities.
7. CASE expects TESCO and DP&L (followed shortly by TP&L) to file for rate increases as soon as the hearings on our Contention 25 are completed, and that testimony in those rate hearings will further document CASE's Contention.
8. Staff's statements that: Applicants have provided a reasonable financing plan in light of relevant circumstances to operate, shutdown (if necessary), decommission and maintain the Comanche Peak facility in a safe condition; Applicants have reasonable assurance under 10 CFR 50.33(f) of obtaining necessary funds to operate Comanche Peak; and Applicants are financially qualified to operate and safely decommission Comanche Peak...are not substantiated by the documents and sworn testimony presented herein or the real-world situation.
9. An accurate review of the Applicants' financial qualifications demonstrates that there is abundant basis in fact which supports Contention 25.
10. Unless the information and documents contained herein and the sworn testimony of the Treasurers of DP&L, TP&L and TESCO is ignored completely, it is obvious that the financial qualifications of the Applicants to operate and decommission Comanche Peak are at a minimum very questionable. Certainly the information and evidence presented herein is sufficient grounds for denying the NRC Staff's 12/27/81 Motion for Summary Disposition of Contention 25 (Financial Qualifications).
11. CASE believes that sworn cross-examination testimony of the Treasurers of DP&L, TP&L and TESCO and other witnesses in these hearings will further

substantiate and support CASE's Contention 25.

Respectfully submitted,

Juanita Ellis

(Mrs.) Juanita Ellis, President
CASE (Citizens Association for Sound Energy)
1426 S. Polk

Dallas, Texas 75224

214/946-9446

214/941-1211, work, usually Tuesdays
and Fridays only

BACKGROUND INFORMATION REGARDING TEXAS RATE HEARINGS:

CASE has participated in all of the Dallas Power & Light Company rate hearings since 1974. These were:

Docket 3460, filed September 1980
Docket 2572, 1979
Docket 1526, 1978
1975-76 (no docket number)

The 1975-76 rate hearings were held only before the City of Dallas and therefore there is no docket number for them. The Texas Public Utility Commission did not go into existence until about September of 1975 (not positive of the exact date). All of the rate hearings after the 1975-76 hearings were held both before the City of Dallas and the PUC. CASE participated in the 1975-76 hearings joined with several other groups; however, thereafter we were separate from other intervenors.

CASE has most of the information from all of these hearings, including transcripts of most of them.

The rate hearings in Texas were designed to operate a little differently from what they are in most States. Cities have the option of retaining control over the rates of electric utilities; any party in the proceedings has the right to appeal the decision to the PUC. However, because of the peculiar wording of another part of the law, due to the stringent time constraints involved and the fact that DP&L, TP&L and TESCO all serve some (seven or so in the case of DP&L) customers in unincorporated areas over which the PUC has jurisdiction, usually hearings are held in the cities retaining original jurisdiction and hearings are also held before the PUC within a brief time span, sometimes no longer than a week. (For example, in the 1979 hearings, CASE filed its interrogatories in Dallas and Austin at the same time.) All of this is brought about because DP&L, TP&L and TESCO file for rate increases in the cities served at the same time they file for rate increases before the PUC. As soon as they file, the clock starts running, so to speak, since under Texas law a decision must be reached within a specified period of time. Although the system isn't working as it was envisioned by the writers of the Texas Public Utility Regulatory Act (PURA) and the effectiveness of the cities has been reduced somewhat because of it, the cities still have and exercise the right of retaining original jurisdiction and act as intervenors in rate hearings before the PUC as well.

Public Utility Commission of Texas



George M. Cowden
Chairman

H. M. Rollins
Commissioner

Garrett Morris
Commissioner

I, Martha M. Bartow, certify that this is a true and correct copy of the Supplemental Response of Applicant To Requests For Information Submitted By Parties, signed by G. A. Engelland and received June 22, 1979, and of the Dallas Power & Light Company Response To CASE First Request For Information Question No. 18 (Additional Response), from Public Utility Commission Docket No. 2572.

ISSUED UNDER MY HAND AND SEAL on this the 13th
day of November, 1981.

SEAL

A handwritten signature of Martha M. Bartow is written over a horizontal line. The signature is in cursive and appears to read "Martha M. Bartow".

Martha M. Bartow
Director of Records Services

BEFORE THE
PUBLIC UTILITY COMMISSION OF TEXAS

RE: PETITION OF
DALLAS POWER & LIGHT COMPANY
TO SET RATES

I
I
I

DOCKET NO. 2572

SUPPLEMENTAL RESPONSE OF APPLICANT
TO REQUESTS FOR INFORMATION
SUBMITTED BY PARTIES

Comes now, Dallas Power & Light Company, applicant, and files the following supplemental response to requests for information submitted by parties.

Respectfully submitted,

By G. A. Engelland
G. A. Engelland
Attorney for Applicant

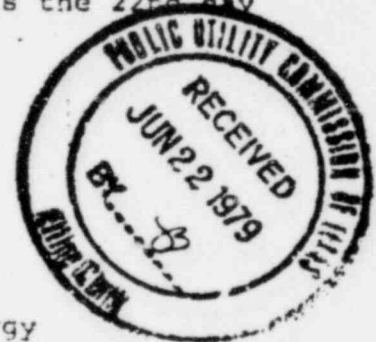
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Applicant's Supplemental Response to Requests for Information attached hereto has been served, either by hand delivery or certified mail, return receipt requested, on the following persons on this the 22nd day of June, 1979.

Mr. George Schalles
Assistant General Counsel
Public Utility Commission of Texas
Suite 400N
7800 Shoal Creek Boulevard
Austin, Texas 78757

Mrs. Juanita Ellis
Citizens Association for Sound Energy
1426 South Polk
Dallas, Texas 75224

Ms. Sheila O'Connor
Dallas Legal Services Foundation, Inc.
810 Main Street, Suite 320
Dallas, Texas 75202



Mr. Thomas Z. James
Hearing Examiner
City of Dallas
City Hall, Room 7A South
1500 Marilla
Dallas, Texas 75201

Ms. Peggy Wells Dobbins
St. Regis Paper Company
150 East 42nd Street
New York, New York 10017

C. A. Engelland
C. A. Engelland

DALLAS POWER & LIGHT COMPANY**Response to CASE First Request for Information****Question No. 18 (Additional Response)**

As outlined in Section 5.8 of the CPSES/ER(OLS) previously furnished the cost for decommissioning Comanche Peak is currently estimated to be \$18.4 million (in 1981 dollars). This cost is not included in the current estimates for the construction cost of the Comanche Peak Steam Electric Station. The cost of decommissioning will be recovered through the depreciation charges which, when approved, will commence when the unit is placed in service and as with any other facility dedicated to public service, will be paid for by the ratepayers who receive the benefit from such facilities. The general plans for decommissioning Comanche Peak Steam Electric Station are as outlined in Section 5.8. Since decommissioning will not occur until after the year 2020, specific plans are not presently available. It is, however, expected that decommissioning plans will follow the best available and accepted technology and methods at the time of decommissioning. The CPSES/ER(OLS) was prepared under the direction of Texas Utilities Generating Company (TUGCO), acting as agent for the owners of the plant. Inquiries concerning the Atomic Industrial Forum study entitled "An Engineering Evaluation of Nuclear Power Reactor Decommissioning Alternatives" may be directed to the Atomic Industrial Forum, 7101 Wisconsin Avenue, Washington, D. C. 20014.

Public Utility Commission of Texas



George M. Cowden
Chairman

H. M. Rollins
Commissioner

Garrett Morris
Commissioner

I, Martha M. Bartow, certify that this is a true and correct copy of the Direct Testimony and Exhibits 1 through 4 and Affidavit of David E. Kelch for Texas Electric Service Company, May, 1980, from Public Utility Commission Docket No. 3250.

ISSUED UNDER MY HAND AND SEAL on this the 13th
day of November, 1981.

SEAL

A handwritten signature of Martha M. Bartow is written over a horizontal line. The signature is in cursive and appears to read "Martha M. Bartow".

Martha M. Bartow
Director of Records Services