

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USING

BEFORE ADMINISTRATIVE LAW JUDGE LAURENSEN '82

APR -7 A9:21

In the Matter of:

HOUSTON LIGHTING AND POWER CO.,)
et al.)

(South Texas Project, Units)
1 and 2))

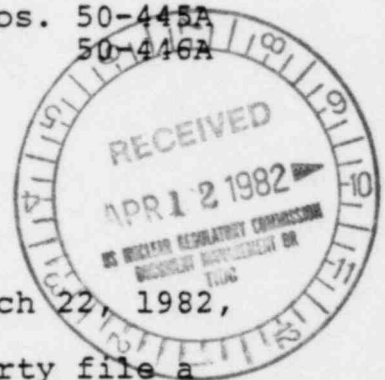
Docket Nos. 50-498A
50-499A

TEXAS UTILITIES GENERATING)
COMPANY, et al.)

(Comanche Peak Steam Electric)
Station, Units 1 and 2))

Docket Nos. 50-445A
50-446A

STATEMENT OF TEXAS UTILITIES GENERATING
COMPANY, et al.



By Notice of Conference of Counsel dated March 22, 1982,
the Administrative Law Judge ordered that each party file a
statement of not more than fifteen pages (including appendices
and attachments) covering: (1) the pertinent history of this
proceeding and its status; (2) the issues to be resolved; and (3)
recommendations as to how each issue should be resolved.

I. SUMMARY

In this statement, Texas Utilities Generating Company, et al
("TUGCO"), Applicant in Comanche Peak, recommends that the Comanche
Peak antitrust proceeding be terminated by authorizing the im-
position of the license conditions heretofore agreed to. All parties
to Comanche Peak, including the Department of Justice and the NRC
Staff, have entered into a settlement which resulted in a withdrawal
of the requests for hearing pursuant to §105.c. of the Atomic

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Energy Act and a stipulation that the licensing of the Comanche Peak Steam Electric Station under the proposed license conditions will not create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in the Atomic Energy Act.^{1/} The Presiding Officer need not make detailed findings with regard to the settlement or the license conditions, but rather should approve the settlement including the proposed license conditions as being fair and reasonable, authorize the Staff to impose the license conditions in the operating licenses for Comanche Peak, and terminate the proceeding. In terminating the Comanche Peak proceeding, the Presiding Officer should, in recognition that no hearing is required, rescind the order of consolidation heretofore entered by the Board.

In its capacity as an intervenor in the South Texas proceeding, TUGCO would defer to the views of the applicants therein.

II. HISTORY OF THE PROCEEDING

A. The Construction Permit Review

In accordance with Subsection 105.c. of the Atomic Energy Act, there was an antitrust review of the Comanche Peak application prior to the issuance of the construction permit. The Attorney General did not recommend an antitrust hearing on the construction permit inasmuch as TUGCO had made certain policy commitments after negotiations with the Department of Justice which TUGCO was willing to have included in the construction permit as antitrust license conditions. No interested person sought to intervene and request a hearing when the Attorney General's advice

^{1/} See TUGCO's September 12, 1980 Status Report and attachments.

was published in the Federal Register.^{2/} The construction permit license conditions were imposed, and, pursuant thereto, Texas Municipal Power Agency and the Brazos Electric Power Cooperative have purchased ownership interests in the Comanche Peak units. The construction permits have been duly amended to reflect their interests.^{3/}

B. The Operating License Antitrust Proceedings

At the instance of Central Power & Light Co. ("CP&L") one of the co-owners of the South Texas project, an operating license hearing^{4/} was ordered in that case on issues involving inter-connection between utilities in the Southwest Power Pool ("SWPP") (made up of utilities connected to the Eastern grid) and utilities in the Electric Reliability Council of Texas ("ERCOT" which is a reporting organization to which utilities in Texas not connected to either the Eastern or Western grids belong). The interconnection issues were triggered when the SEC commenced an inquiry into the status of Central and Southwest Corporation ("CSW"), CP&L's parent corporation, as an integrated electric public utility system as defined in the Public Utility Holding Company

^{2/} See "Joint Motion of NRC Staff and Applicants . . .", May 2, 1978, at 1.

^{3/} 44 Fed. Reg. 76893 (December 28, 1979).

^{4/} In the South Texas proceeding, which was also subject to an antitrust review on the issuance of the construction permit, the Attorney General did not recommend a hearing, no license conditions were imposed, and there was no antitrust intervention at the construction permit stage. See the Commission's Memorandum and Order, 5 NRC 1303, 1305 (1977).

Act of 1935.^{5/} This NRC proceeding is based on the Commission's determination that the interconnection dispute constituted "significant changes" under section 105.c.2 of the Atomic Energy Act.^{6/} The interconnection dispute erupted when Central and Southwest Corporation, in an effort to protect its status as a holding company in the above-referenced SEC proceeding, made a self-help attempt to bring about electrical integration of its four operating subsidiaries. This action and defensive counteractions led to a temporary bifurcation of electric utility systems within Texas and a flurry of litigation among affected utilities in Texas, Oklahoma, Louisiana and elsewhere.^{7/} Despite its earlier conclusion at the construction permit stage, the Department of Justice in 1978 recommended a further antitrust review in connection with the application for operating licenses for Comanche Peak (having previously made such a recommendation in South Texas).

In response to the Notice of Hearing, Tex-La Electric Cooperative (later replaced by Tex-La of Texas Electric Cooperative) and Central and Southwest Corporation and its subsidiaries petitioned for and were granted intervenor status.^{8/}

^{5/} Id. and Order, 7 NRC 397 (1978). The SEC Order initiating the proceeding was published at 41 Fed. Reg. 5310 (February 5, 1976). The SEC proceeding was recently terminated. See "Memorandum Opinion and Order Terminating Proceeding", SEC Administrative Proceeding File No. 3-4951. The basis for termination was the FERC Order in FERC Dockets EL79-8 and E-9558 discussed infra. Copies are not provided herewith in view of the 15-page limit, but are available upon request. See Appendix A hereto.

^{6/} 5 NRC 1303 supra at 1319-20; Texas Utilities Generating Company (Comanche Peak Steam Electric Station) 7 NRC 950 (1978).

^{7/} See Appendix A

^{8/} "Order Granting Intervention Petitions..." (October 19, 1978).

Following the trial of the antitrust action brought by CSW against TU and HL&P in a United States District Court, which concluded that TU and HL&P's conduct in defense of their respective jurisdictional status did not violate the antitrust laws,^{9/} the parties in the Comanche Peak proceeding and the South Texas proceeding prepared for evidentiary hearings in the operating license antitrust proceeding. Initially, the Comanche Peak and South Texas proceedings were consolidated for discovery.^{10/} Beginning in 1978 until early 1980, scores of depositions were taken, numerous motions and other pleadings were filed and many thousands of documents examined with the trial being scheduled for the late spring of 1980. On the eve of trial, settlement discussions among the parties had progressed to such a stage (agreement in principle among CSW, HL&P and TUGCO was followed by definitive agreement, which was followed by agreement with other parties) that the Board postponed the trial date to give the parties time to arrive at a settlement.^{11/}

C. RESOLUTION OF THE INTERCONNECTION DISPUTE

The core issue in these proceedings concerned interconnections between the SWPP and ERCOT. Settlement in the Comanche Peak

^{9/} West Texas Utilities Co. v. Texas Electric Service Co. et al, 470 F.Supp. 798 (1979). See Appendix A.

^{10/} Prehearing Conference Order Regarding Issues, Discovery, and Consolidation (December 5, 1978) at 6-7. Subsequently, the Licensing Board sua sponte consolidated the two proceedings for trial. Order Extending Procedural Dates and Directing Consolidation (April 10, 1980).

^{11/} See April 10, 1980 "Order Extending Procedural Dates..." (n. 10 supra); TUGCO Status Reports of May 9, June 9, and July 11, 1980; "Prehearing Conference Order..." of July 17, 1980; and TUGCO's September 12, 1980 report, (n.1 supra.)

proceeding was premised on the assumption that FERC would require the construction of asynchronous interconnections between SWPP and ERCOT.^{12/} Those connections have now been ordered and related conditions approved by FERC in a series of orders which have become final, the time for appeal having expired.^{13/} The FERC order covers, among other things, the terms and conditions under which utilities may participate in the ownership of and use the d.c. connections as well as future additions thereto. The FERC order likewise governs rates and service for wheeling transactions to, from and over the d.c. connections. FERC has thus ruled on all issues regarding interconnection, disconnection, wheeling service and rates and other economic regulatory issues, and has facilitated purchase, sale, wheeling and exchange transactions between SWPP and ERCOT. Disposition of the interconnection controversy has been supported by more than 25 utility systems -- virtually every electric utility in Texas, Oklahoma, Louisiana and Arkansas -- as well as the Texas Public Utilities Commission,

^{12/} See the attachments to TUGCO's September 12, 1980 Status Report. See also the FERC notice of the amended application seeking approval of asynchronous direct current connections between SWPP and ERCOT, 45 Fed. Reg. 46868 (July 11, 1980).

^{13/} FERC Docket Nos. EL 79-8, E9558, Order of October 28, 1981 (adopting settlement); related Errata Notice (November 5, 1981); and Order on Rehearing (January 29, 1982) (incorporating parties' proposed form of order by reference). The first two were transmitted by the Staff to the Licensing Board by letter of October 17, 1981. The last order and material it incorporated by reference will be supplied on request. See Appendix A.

the FERC, the Department of Energy, the Department of Justice and the Nuclear Regulatory Commission.

Whatever uncertainties there may have been at an earlier stage of this proceeding as to whether FERC would in fact order the exempt direct current asynchronous connection of the utilities in SWPP with utilities in ERCOT, and as to what course these proceedings would take if it did not so order, such interconnection has now been ordered and the time for appeal has expired. The matters which were at the heart of the interconnection dispute and the "significant changes" giving rise to these proceedings have been resolved by the FERC. With the finality of the FERC order, and with the resolution of the controversies in the other proceedings (see Appendix A), the time has come to terminate the NRC Comanche Peak proceeding.^{14/}

D. OTHER ISSUES IN COMANCHE PEAK WERE PREVIOUSLY RESOLVED

Tex-La Electric Power Cooperative, Inc. was permitted to intervene in the Comanche Peak operating license proceeding seeking, inter alia, ownership participation.^{15/} Subsequently, that entity was replaced as a party by a newly formed one, Tex-La of Texas, Inc. (all of whose members were among the original seventeen member cooperatives), with whom TUGCO entered into a letter of intent on May 6, 1980. That agreement was duly reported

^{14/} On several prior occasions, TUGCO has given notice of its intent to move at the appropriate time (which with the finality of FERC order discussed below, has now come) for an order terminating the Comanche Peak proceeding. See, e.g. Tr. 1257-58; Response of TUGCO to Brownsville's September 25, 1980 Motion (October 6, 1980) at 4-5; TUGCO's Response to Brownsville's November 12, 1980 Comments (December 3, 1980) at 3.

^{15/} n.9, supra

to the Licensing Board then presiding. It provided for ownership participation By Tex-La of Texas in Comanche Peak as well as related arrangements.^{16/} The construction permit has been duly amended to reflect Tex-La's planned 4-1/3% ownership participation.^{17/} Subsequently, Tex-La of Texas opted to purchase only a 2-1/6% interest, which has been duly reflected in another construction permit amendment.^{18/}

III. ISSUES AND RECOMMENDATIONS: COMANCHE PEAK

The only issue in Comanche Peak is whether it should be terminated by authorizing the NRC Staff to incorporate the proposed license conditions into the operating licenses and rescinding the order consolidating it with the South Texas proceeding. Since all parties to the Comanche Peak proceeding support termination^{19/} and since no evidentiary proceeding is

^{16/} Tex-La of Texas Status Report of May 9, 1980; TUGCO Status Report of May 9, 1980 at 3, para. 5.

^{17/} 46 Fed. Reg. 49692 (October 7, 1981).

^{18/} 46 Fed. Reg. 14634 (April 5, 1982).

^{19/} The Public Utilities Board of Brownsville Texas, which is a party in South Texas but not a party in Comanche Peak, at one point purported to object to the Comanche Peak settlement license conditions. The history of Brownsville's non-party status in Comanche Peak and pertinent authorities regarding the lack of standing of a party to only one of two consolidated proceedings to object to settlement of the other proceeding are set forth in "Motion of Texas Utilities Generating Company to Strike References to Comanche Peak..." dated October 6, 1980. See especially Johnson v. Manhattan Railway Company, 289 U.S. 479, 496-97 (1932) (consolidation does not make party to one proceeding party to the other proceeding with which it has been consolidated), and State Mutual Life Assurance Company of America v. Deer Creek Park, 612 F.2d 259 (6th Cir. 1979) (agreement to stipulation of settlement of one action by parties to other action with which first was consolidated not required because each of the consolidated proceedings maintains its independent status with respect to rights of the parties thereto). The Licensing Board advised TUGCO at the October 24, 1980 Prehearing Conference that we could assume our motion to strike would be granted. (Tr. 1258-59; 1266).

required, we recommend this action in fairness to the parties, as conducive to the proper dispatch of Commission business and to the ends of justice and in the public interest.

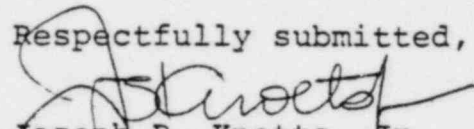
Since an operating license for fuel loading for the first unit of Comanche Peak will be required by June 1983 while an operating license for the South Texas project may not otherwise be ripe for issuance for some years hence, it is essential that the Comanche Peak proceeding be terminated and in connection therewith that the order for consolidation in South Texas be rescinded.

In at least two prior antitrust proceedings pursuant to Subsection 105.c. of the Atomic Energy Act, the proceedings were terminated without line-by-line approval of license conditions by the Presiding Officer. In the St. Lucie proceeding,^{20/} the parties entered into agreements satisfactory to themselves; the intervenors withdrew; and the NRC Staff and the Department of Justice advised the Presiding Officer that there was no further need for hearing and that the proceeding could be and should be

^{20/} Florida Power & Light Co. (St. Lucie Plant, Unit 2), Licensing Board "Memorandum and Order" (March 24, 1982) (not yet published). We do not subscribe to the portion of the order which refers to the Tunney Act and the Clayton Act, however.

terminated. This action referenced the termination of the Hatch
proceeding in 1974. ^{21/}

Respectfully submitted,


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Date: April 6, 1982

21/ Georgia Power Co. (Edwin I. Hatch Nuclear Power Plant,
Unit 2) 8 AEC 107 (1974).

* /
APPENDIX A

Securities and Exchange Commission
Admin. Proc. File No. 3-4951

On February 16, 1945, the SEC issued a decision in which it determined that the electric utility system of CSW was an integrated electric public utility system as defined in the Public Utility Holding Company Act of 1935. The Middle West Corporation, et al, 18 SEC 296 (1945). On March 26, 1974, certain Oklahoma municipalities and cooperatives filed a motion challenging this status and requesting that the SEC undertake a review thereof. On December 31, 1975, CSW filed a memorandum reporting on the conclusion of an initial engineering study undertaken by PTI Technologies, Inc. which evaluated several alternative modes of future operation of its system, including interconnecting facilities of the subsidiaries of TU and adjacent facilities with existing and proposed interstate facilities of CSW. On January 30, 1976, the SEC issued a Notice of and Order for Hearing relating to the economical operation of the electric utility facilities of the subsidiaries of CSW as a single integrated and coordinated system under the 1935 Act and the various plans referred to in the memorandum. Hearings on the issues raised in the SEC Notice, as subsequently amended, were held from time to time commencing in September, 1976. On April 1, 1982, the SEC issued a Memorandum Opinion and Order Terminating Proceeding, finding that the issues which led to the institution of this proceeding have been disposed of and resolved by the Settlement Agreement by and among CSW, TU and HL&P, as approved by the FERC by Order dated October 28, 1981, and that the Commission's decision and order of February 16, 1945 continues to remain in effect.

Federal Energy Regulatory Commission (FERC)
Docket No. E-9558

On May 4, 1976, CSW filed a petition with the FPC (now FERC) stating that on that date WTU commenced interstate operation through interconnection with PSO. The petition further alleged that, because such interconnections resulted in the transmission of electric energy at wholesale in interstate commerce by all members of ERCOT and SWPP, TU and HL&P were thus subject to the jurisdiction of the FPC and sought permanent interstate interconnections involving CSW, TU and other electric utilities in Texas. On July 21, 1976, the FPC issued an order which, among other things, found that the TU Companies and HL&P were not public utilities as defined in the Federal Power Act and dismissed the CSW petition. CSW thereafter appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit, and on April 10, 1978, the Court of Appeals remanded the July 21, 1976 order to the FERC for clarification. On August 24, 1978, the TU Companies filed with the U.S. Supreme Court a petition for writ of certiorari to review the judgment and opinion of the Court of Appeals, requesting that the appellate court be directed

* / To April 6, 1982 Statement of Texas Utilities Generating Company, et al.

to sustain the FERC's determination that it was without jurisdiction over the TU Companies, which petition was denied in November, 1978. This proceeding was dismissed as a part of the settlement approved by the FERC by Order dated October 28, 1981, as subsequently corrected and clarified, in FERC Docket EL79-8.

West Texas Utilities Company and Central Power & Light Company
v. Texas Electric Service Company and Houston Lighting & Power
Company U.S. District Court for the Northern District of Texas

On May 3, 1976, WTU and CP&L filed a complaint against TESCO and HL&P, seeking a decree that continued operation under the intrastate covenant of the TESCO-WTU 1938 contract, as amended, was in violation of the federal antitrust laws and generally to require TESCO and HL&P to operate interconnected with the interstate facilities of WTU and CP&L. Trial took place during October and November, 1978. On January 30, 1979, the Court issued a Memorandum Opinion and on February 27, 1979, rendered judgment holding, among other things, that TESCO and HL&P had not violated the federal antitrust laws and that it would not be in the public interest to force them to interconnect in interstate commerce. The Court also entered judgment on HL&P's counterclaim, permanently enjoining CP&L from permitting power it receives from the South Texas Project to enter interstate commerce as long as CP&L remains a participant in the STP agreement. Plaintiffs thereafter appealed this judgment to the U.S. Court of Appeals for the Fifth Circuit, which appeal has been held in abeyance pending implementation of the Settlement Agreement. In this connection, WTU and CP&L will dismiss their appeal on or about April 6, 1982, thereby permitting the judgment of the District Court to become final. In addition, effective upon dismissal of this appeal, the District Court will enter a Modified Judgment on HL&P's counterclaim so as to permit construction and operation of the interconnections required by the FERC Order of October 28, 1981, as corrected and clarified.

Public Utility Commission of Texas
Docket No. 14

After being informed that WTU had interconnected with PSO on May 4, 1976 resulting in a bifurcation of TIS, the PUC called an emergency hearing for May 7, 1976, at which all members of TIS were represented. On May 24, 1976, the PUC issued an order finding no emergency but permitting each system to operate as it chose, provided any such operation did not put the intrastate system into interstate commerce. On January 7, 1977, TU and HL&P filed a motion with the PUC requesting that the PUC enter an order requiring, among other things, WTU and CP&L to appear and show cause why they should not be ordered to return to the pre-May 4, 1976 mode of operation. At a hearing held on May 2, 1977, the PUC entered an interim Order which, in effect, required all parties to return to the pre-May 4, 1976 mode of operation and WTU to sever its interstate tie into Oklahoma. On June 2, 1977, the PUC Issued Its Final Order which, among other things, confirmed its Interim Order. Following a hearing on various motions

for rehearing, the PUC, on July 11, 1977, entered an Amended Final Order which clarified but did not substantially change its June 2 Final Order. CP&L and WTU thereafter instituted a statutory appeal to the District Court of Travis County, Texas, seeking to set aside the Amended Final Order and the Interim Order as incorporated therein. Oral argument was held before the Court on December 4, 1978, and the appeal has been held in abeyance pending implementation of the Settlement Agreement. In this connection, CP&L and WTU will dismiss this appeal on or about April 6, 1982, thereby permitting the PUC Amended Final Order to become final.

Federal Energy Regulatory Commission
Docket No. EL79-8

On February 9, 1979, CSW filed an application, pursuant to the Public Utility Regulatory Policies Act of 1978, for exemption from three orders of the Texas PUC which allegedly prevented CP&L and WTU from voluntarily establishing or maintaining an electrical interconnection with any utility other than those comprising ERCOT, and also seeking an order requiring interconnection, wheeling and related relief. On July 29, 1979, the FERC issued an order, among other things, instituting an investigation granting in part and denying in part motions by TU and the Texas PUC to dismiss and establishing hearing procedures. On August 27, 1979, the Texas PUC appealed this order to the U.S. Court of Appeals for the Fifth Circuit (79-3054). In connection with implementation of the Settlement Agreement, this appeal will be dismissed by the Texas PUC in April 1982. On October 3, 1979, the FERC dismissed CSW's request for relief under Section 205 of PURPA, and CSW appealed this decision, which appeal was transferred and consolidated with the Texas PUC appeal mentioned above. In connection with implementation of the Settlement Agreement, CSW will dismiss its appeal on or about April 6, 1982. On June 9, 1980, CSW, the TU Companies and HL&P entered into the Settlement Agreement which involves, among other things, the construction of two high voltage direct current asynchronous interstate interconnections between ERCOT and SWPP and was contingent upon, among other things, an order from the FERC exempting the TU Companies and HL&P from additional federal regulation. As provided in the Settlement Agreement, CSW on June 27, 1980, filed an amended application in this proceeding requesting the order specified in the Settlement Agreement as an alternative to the relief requested in its original application, and on July 28, 1980, CSW, TU and HL&P jointly submitted an Offer of Settlement which would effectuate the proposals set forth in CSW's amended application. The Offer of Settlement was supplemented on two occasions -- first by agreement dated September 11, 1980, executed by the FERC staff, CSW, HL&P and TU, and then on June 22, 1981, when CSW advised the Commission that an agreement had been executed by it and the Department of Justice under which DOJ agreed not to contest the Offer of Settlement, as supplemented. The Offer of Settlement, as supplemented, was certified by the Administrative Law Judge to

to the Commission as an uncontested offer of settlement on July 10, 1981. On October 28, 1981, the FERC issued an Order approving the settlement, which was corrected by Errata Notice issued November 5, 1981 and clarified by Order on Rehearing issued January 29, 1982. On February 25, 1982, CSW, TU and HL&P withdrew their previously filed joint petition for rehearing, thereby permitting the FERC Order of October 28, 1981, as corrected and clarified, to become final.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Comanche Peak Steam Electric)	
Station, Units 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that copies of "Statement of Texas Utilities Generating Company, et al." in the above captioned matters, were served upon the following persons by deposit in the United States mail, first class postage prepaid this 6th day of April, 1982.

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Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

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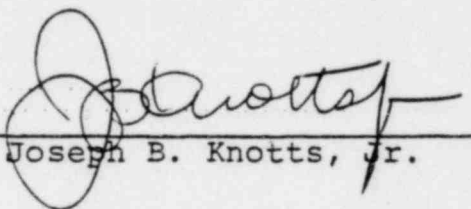
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