

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNR

'82 MAY -4 P5:05

In the Matter of)

HOUSTON LIGHTING & POWER)
COMPANY, et al.)

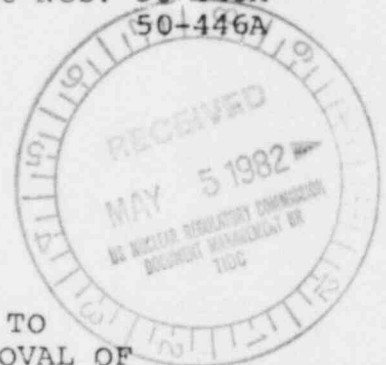
(South Texas Project, Units 1 and 2))

TEXAS UTILITIES GENERATING)
COMPANY, et al.)

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

Docket Nos. 50-498A
50-499A

Docket Nos. 50-445A
50-446A



RESPONSE OF THE DEPARTMENT OF JUSTICE TO
BROWNSVILLE AND REQUEST FOR IMMEDIATE APPROVAL OF
THE SETTLEMENT LICENSE CONDITIONS

Pursuant to the order of the Administrative Law Judge dated April 15, 1982, the Department of Justice ("Department") hereby submits its response to the filing of the Public Utilities Board of the City of Brownsville, Texas ("Brownsville"). The Department further requests that the Administrative Law Judge immediately approve and order the attachment of the settlement license conditions for both the Comanche Peak units and the South Texas Project. Finally, the Department requests that the Administrative Law Judge order Brownsville to inform him and the parties whether it will seek further relief, either by evidentiary hearing or otherwise. Unless Brownsville can support the need for further proceedings, both the Comanche Peak and South Texas proceedings should be terminated.

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On April 15, 1982 the Administrative Law Judge ordered Brownsville to submit responses to four questions to determine its position with regard to the proposed settlement of the South Texas case. Brownsville was not required to set forth its position concerning the Comanche Peak settlement license conditions. Brownsville did not intervene in the Comanche Peak proceeding and is not a party to that proceeding. All parties to the Comanche Peak proceeding have withdrawn or agreed to the proposed settlement. That settlement is now uncontested and the proposed license conditions should now be immediately approved and ordered attached without further showing by the parties. The Department submits that the record already contains adequate information to find that the proposed Comanche Peak settlement license conditions are in the public interest. See pp. 3-4, infra.

Brownsville has responded to the four questions set forth in the order of April 15, 1982 concerning its position in South Texas. Brownsville now takes the position that it does not oppose approval of the proposed settlement in the South Texas case and that it does not request rejection of that settlement. It has not stated that approval of that settlement will either affirmatively harm it or create or maintain a situation inconsistent with the antitrust laws. Given these responses, it would appear that Brownsville no longer contests the approval and attachment of the proposed settlement license conditions in South Texas.

In cases where not all parties have entered into a settlement or agreed to withdraw, the Nuclear Regulatory Commission has approved settlement license conditions where it has found that they are a fair and reasonable settlement in the public interest and that their immediate attachment would not prejudice any party. 1/ Brownsville's response does not state that it will be prejudiced by immediate attachment. Consequently, the Administrative Law Judge need only determine that the settlement is a fair and reasonable settlement within the public interest in order to approve these conditions. The Department submits that this settlement meets this test and that there currently exists an adequate record for such a determination.

On December 3, 1980, the NRC staff filed its Comments and Motion For Approval of Settlement License Conditions. 2/ That pleading contains a detailed analysis of the reasons the proposed settlement license conditions in both the Comanche Peak and South Texas proceedings are in the public interest. The Department also filed on that date a pleading setting forth

1/ See, e.g., Duke Power Company (Catawba Nuclear Station, Units 1 & 2), LBP-74-47, 7 A.E.C. 1158, 1159 (1974); Louisiana Power & Light Co. (Waterford Steam Generating Station, Unit No. 3), LBP-74-78, 8 A.E.C. 718 (1974); Florida Power & Light Co. (St. Lucie Plant, Unit No. 2), "Memorandum and Order" (April 24, 1981), unpublished, at 3-6, 12.

2/ NRC Staff Comments On and Motion For Approval of Settlement License Conditions, dated December 3, 1980. The Motion For Approval of the Settlement License Conditions has not yet been ruled upon and is currently pending.

its support for the settlement license conditions as being in the public interest. 3/ On the basis of this record, the Administrative Law Judge should find the settlement license conditions to be in the public interest and order their attachment.

In the view of the Department, only one unresolved matter remains. While this matter does not prevent the Administrative Law Judge from immediately approving the settlement license conditions and ordering their attachment, it could delay termination of the South Texas proceeding unless resolved now. It is unclear to the Department whether Brownsville may yet seek an evidentiary hearing to obtain relief in addition to the settlement license conditions in the South Texas proceeding. Although Brownsville's responses and statements of its counsel (Tr. at 1315, 1323) can be read to indicate that it will not do so, the matter may not be free from doubt.

3/ Reply of the Department of Justice to the Comments of the Public Utilities Board of the City of Brownsville Opposing Proposed Settlement License Conditions, dated December 3, 1980 at 514. The Department also set forth its position in support of the settlement license conditions at the prehearing conference held before the Licensing Board on October 24, 1980. The Department also addressed the manner in which the licensing conditions would remedy the situation set forth in its advice letters. (Tr. at 1215-1222). The Department does not believe that the Administrative Law Judge need find that the settlement license conditions remedy the situation inconsistent with the antitrust laws alleged in the Attorney General's advise letter before approving the license conditions. However, the Administrative Law Judge may find these discussions useful. The Department's position with regard to the relevance of the AC and DC interconnection issue to these proceedings was also set forth there. (Tr. at 1222-1236).

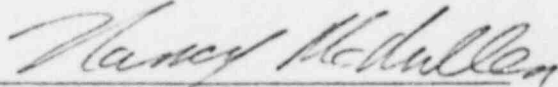
In order to resolve this last issue, the Department requests that the Administrative Law Judge order Brownsville to state for the record, within ten days of that order, whether it intends to request an evidentiary hearing or otherwise seek relief in addition to the settlement license conditions in the South Texas case. If Brownsville indicates it will not seek further relief, both the Comanche Peak and South Texas proceedings should be terminated. In the event Brownsville indicates that it does intend to request further relief in South Texas, Brownsville should be required to state at that time and with specificity the issues that will require further resolution and whether it believes an evidentiary hearing will be required to resolve each such issue.

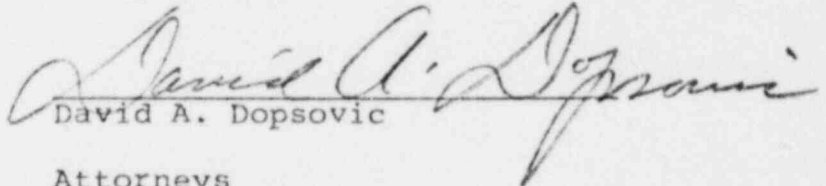
In conclusion, the Department of Justice requests that the settlement license conditions for both the Comanche Peak units and the South Texas Project be approved and made effective in their entirety. The Department further requests that the Administrative Law Judge order Brownsville to state for the record whether it will seek any further relief in the South

Texas case and whether it believes an evidentiary hearing will
be required.

Dated: May 4, 1982
Washington, D.C.

Respectfully submitted,


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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Status Report of the Department of Justice has been made on the following parties listed hereto this 4th day of May 1982, by depositing copies thereof in the United States mail, first class, postage prepaid.

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