

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

HOUSTON LIGHTING & POWER COMPANY
PUBLIC SERVICE BOARD OF SAN ANTONIO
CITY OF AUSTIN
CENTRAL POWER AND LIGHT COMPANY
(South Texas Project, Unit Nos. 1
and 2)
TEXAS UTILITIES GENERATING
COMPANY, et al.
(Comanche Peak Steam Electric
Station, Units 1 and 2

}
} NRC Docket Nos. 50-498A
} 50-499A

}
} NRC Docket Nos. 50-445A
} 50-446A

NRC STAFF OBJECTIONS TO AND MOTION FOR REVISION OF THE
PREHEARING CONFERENCE ORDER OF JULY 17, 1980

The NRC Staff, pursuant to 10 CFR § 2.752, hereby submits its objections to the Prehearing Conference Order and Notice of Final Prehearing Conference as issued by the Board on July 17, 1980 (hereinafter "Prehearing Conference Order"). The Staff, in light of the objections set forth below, also herein proposes revisions to the Prehearing Conference Order and moves the Board for their adoption. The Staff has been authorized by the following parties to state their support for the Staff's Objections and Motion for Revision: U.S. Department of Justice, Central & South West Corporation, and South Texas Electric Cooperative, Inc. - Medina Electric Cooperative, Inc.

8008040084

M

I. STAFF'S OBJECTIONS

In the Prehearing Conference Order, the Board suggests that the parties "exert maximum efforts to settle their remaining disputes."^{1/} The Staff and other parties have been doing so since the first extension of time to explore settlement was granted by this Board on April 10, 1980.^{2/} It was this unfettered extension of time which enabled the parties to leave the arena of trial preparation and to embark upon meaningful and intensive settlement efforts. Time has shown the Board's wisdom in granting the first and the subsequent time extensions; settlement has been achieved in a substantial number of areas among a number of the parties.

The Staff believes that the Prehearing Conference Order has now reintroduced trial preparation obligations into the time period in which settlement on the most difficult issues also must be attempted. The Staff's estimation is that this will seriously harm the settlement process and bring it to a premature halt. The Board's trial preparation obligations appear on pages 5 and 6 of the Prehearing Conference Order. The Board requires first that, if full settlement is not reached, the parties themselves attempt to agree upon how to frame issues pertaining to unresolved areas of settlement. This ostensibly involves not only settlement or remedy issues but also those which relate to the "liability" phase of the hearing (which may or may not be eventually found necessary). Second, the Board requires, prior to any

^{1/} At p.5.

^{2/} Order Extending Procedural Dates, And Directing Consolidation (April 10, 1980).

guidance from it on the actual issues governing any eventual hearing, the parties to submit the "evidence to be adduced at the hearing" along with exhibits, summaries of testimony, and trial briefs in the September status report. The Board also requires the parties to cooperate to simplify issues of proof, to stipulate on factual matters, and to exchange documents during this same time period.

The Board's intentions to bring settlement efforts to a conclusion are sound, and the Staff considers the September deadline reasonable, based upon the current situation. While the Board's other intentions to narrow the issues and the necessary proofs are also sound, they are nonetheless premature at this point. Moreover, such requirements will dramatically restrict any further meaningful exploration of the complex settlement issues now remaining unresolved. The Staff cannot address those settlement issues while, simultaneously, fulfilling the obligations placed upon the parties by the Board. One principal reason is that, until the Board approves the settlement license conditions (either a partial or a full set of license conditions) on which the Staff has been able to reach agreement with the applicants, the Staff would not be in a position to advise the Board that a full antitrust hearing is not necessary. Once the NRC Staff receives Board approval on the settlement license conditions, the Staff can then proceed to address any remaining issues in the case which must be heard to determine if the facility license could then issue without creating or maintaining a situation inconsistent with the antitrust laws or their underlying policies.^{3/}

^{3/} Section 105c(5) and (6), 42 U.S.C. § 2135c(5) and (6).

Another difficulty with the Prehearing Conference Order is that while settlement has thus far proceeded on an issue by issue basis, those issues related solely to the relief phase of the hearing, i.e., to the remedies to be sought. There has not been any full discussion of how to narrow the liability-oriented trial issues, particularly since the Board's involvement is indispensable as the first step in that narrowing process. Yet, the Board's Order now requires the parties, once agreement cannot be reached on settlement issues relating only to the remedy phase of a hearing, to agree among themselves upon all issues that remain for trial. The Staff believes that this will not be a fruitful pursuit absent prior Board guidance on the nature of the hearing. The parties will begin discussions over how to frame the remaining issues, what procedures perhaps exist to facilitate narrowing the hearing, and whether discovery is appropriate on newly-framed issues. In addition, each party will have to review its documentary evidence in light of those discussions and, in some cases, may have to develop additional evidence on any new issues which the Board might ultimately accept for the hearing. It is, given the Staff's estimation that agreement among the parties on trial issues will be very difficult, impossible to prepare and submit an outline of a direct case or an appropriate trial brief in the September status report without a prior ruling from the Board on the issues and procedures governing the hearing.

A further problem is that any presentation by the parties of witnesses and proof on issues depends, in large part, on the Board's views of the application of certain procedures which can be used to narrow the issues of any

hearing in accordance with the Board's powers under 10 CFR § 2.752. Waterford,^{4/} for example, suggests one avenue which might prove useful in this regard. In that case, narrowing of issues enabled the parties to litigate only the remedy phase to test the sufficiency of a partial settlement. The applicants adopted "assumptions arguendo" to define the alleged situation inconsistent as a prerequisite to narrowing the scope of the Waterford hearing. There is no guarantee at this stage that the applicants are willing to do the same in these proceedings, nor is there any assurance that the Board would be willing to entertain such a procedure even were the applicants to adopt such assumptions arguendo. These difficulties and uncertainties will shift the focus of all parties' efforts during the next 45-50 days to trial preparation, not to settlement. The Staff suggests that unencumbered time to consider settlement proposals is the best way to insure narrowing of eventual trial issues, and that the Board must itself be involved in the narrowing process before the parties can submit evidence and briefs on the remaining issues.

II. STAFF'S PROPOSED REVISIONS

The Staff suggests that the following revised procedures be adopted by the Licensing Board in a Supplementary Prehearing Conference Order:

(1) Written status reports on settlement shall be submitted to the Board as presently ordered, by 12:30 p.m. on September 12, 1980. Such status reports should contain information as to settlement activities since

^{4/} Louisiana Power & Light Co. (Waterford Steam Electric Generating Station, Unit 3), CLI-73-25, 6 AEC 619 (1973).

the previous status report, the license conditions or settlement agreements which have been reached among the parties as of that time, and a brief explanation of those areas in which settlement has not been reached. These status reports should also include the parties' proposals on issues remaining for a hearing and, if appropriate, on any procedures necessary to narrow the scope of the hearing. The parties should be expected to consult and agree, where possible, on a joint statement of unresolved issues and of procedures to be followed for the hearing.

(2) The prehearing conference, set for Monday, September 15, 1980 at 10:00 a.m., should be held as scheduled to discuss the September status reports and the parties' statements of issues and procedures by which to narrow the hearing.

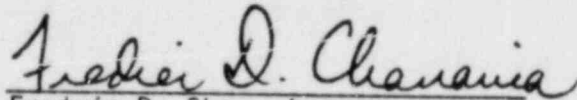
(3) The Board shall thereafter rule on the proposed issues for trial as well as on its acceptance or rejection of the proposed settlement conditions which have been submitted by the parties. It shall, in this ruling, then give the parties a reasonable time (4 to 6 weeks) to submit trial briefs, lists of witnesses, and documents which will address the issues then remaining for trial. The Board may also wish to reinstitute the previous two-phase schedule for such submissions.

(4) Thereafter, a final prehearing conference shall be held and the hearing shall commence in accordance with the procedures previously adopted by the Board.

III. CONCLUSION

The NRC Staff moves the Board to revise its Prehearing Conference Order in light of the objections and proposed revisions set forth above.

Respectfully submitted,



Fredric D. Chananian
Fredric D. Chananian
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 31st day of July, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

HOUSTON LIGHTING & POWER COMPANY)
PUBLIC SERVICE BOARD OF SAN ANTONIO)
CITY OF AUSTIN)
CENTRAL POWER AND LIGHT COMPANY)
(South Texas Project, Unit Nos.)
1 and 2))

NRC Docket Nos. 50-498A
50-499A

TEXAS UTILITIES GENERATING)
COMPANY, et al.)
(Comanche Peak Steam Electric)
Station, Units 1 and 2))

NRC Docket Nos. 50-445A
50-446A

CERTIFICATE OF SERVICE

I hereby certify that copies of NRC STAFF OBJECTIONS TO AND MOTION FOR REVISION OF THE PREHEARING CONFERENCE ORDER OF JULY 17, 1980 in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, this 31st day of July 1980:

Marshall E. Miller, Esq., Chairman
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Michael L. Glaser, Esq.
1150 Seventeenth Street, N.W.
Washington, D.C. 20036

Sheldon J. Wolfe, Esq.
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

R.L. Hancock, Director
City of Austin Electric Utility
P.O. Box 1088
Austin, Texas 78767

Robert Fabrikant, Esq.
Donald A. Kaplan, Esq.
Nancy A. Luque, Esq.
Frederick H. Parmenter, Esq.
David A. Dopsovic, Esq.
Rangeley Wallace, Esq.
P.O. Box 14141
Washington, D.C. 20044

Mr. William C. Price
Central Power & Light Co.
P.O. Box 2121
Corpus Christi, Texas 78403

G.W. Oprea, Jr.
Executive Vice President
Houston Lighting & Power Company
P.O. Box 1700
Houston, Texas 77001

Robert E. Bathen
R.W. Beck & Associates
P.O. Box 6817
Orlando, Florida 32803

Somervell County Public Library
P.O. Box 147
Glen Rose, Texas 76043

R. Gordon Gooch, Esq.
John P. Mathis, Esq.
Steven R. Hunsicker, Esq.
Baker & Botts
Suite 300
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

J.K. Spruce, General Manager
City Public Service Board
P.O. Box 1771
San Antonio, Texas 78296

Robert C. McDiarmid, Esq.
Robert A. Jablon, Esq.
George Spiegel, Esq.
David A. Giacalone, Esq.
Marc R. Poirier, Esq.
Alan J. Roth, Esq.
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D.C. 20037

Jon C. Wood, Esq.
W. Roger Wilson, Esq.
Matthews, Nowlin, Macfarlane
& Barrett
1500 Alamo National Building
San Antonio, Texas 78205

Mr. W.N. Woolsey
Kleberg, Dyer, Redford & Weil
1030 Petroleum Tower
Corpus Christi, Texas 78474

Dick Terrell Brown, Esq.
800 Milam Building
San Antonio, Texas 78205

E. William Barnett, Esq.
Charles G. Thrash, Jr., Esq.
Melbert D. Schwarz, Esq.
Theodore F. Weiss, Esq.
J. Gregory Copeland, Esq.
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

Jerome Saltzman, Chief
Utility Finance Branch
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555 *

Robert Lowenstein, Esq.
J.A. Bouknight, Esq.
William J. Franklin, Esq.
Peter G. Flynn, Esq.
Douglas G. Green, Esq.
Lowenstein, Newman, Reis, Axelrad
& Toll
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Jerry L. Harris
Richard C. Balough
Dan H. Davidson, City Manager
City of Austin
P.O. Box 1088
Austin, Texas 78767

Jay Galt, Esq.
Jack P. Fite, Esq.
Looney, Nichols, Johnson & Hayes
219 Couch Drive
Oklahoma City, Oklahoma 73102

Merlyn D. Sampels, Esq.
Jos. Irion Worsham, Esq.
Spencer C. Relyea, Esq.
Robert A. Wooldridge, Esq.
2001 Bryan Tower, Suite 2500
Dallas, Texas 75201

Morgan Hunter, Esq.
McGinnis, Lochridge & Kilgore
Fifth Floor, Texas State Bank Building
900 Congress Avenue
Austin, Texas 78701

Joseph B. Knotts, Esq.
Nicholas S. Reynolds, Esq.
C. Dennis Ahearn, Esq.
Leonard W. Belter, Esq.
Debevoise & Liberman
1200 Seventeenth Street, N.W.
Washington, D.C. 20036

Douglas F. John, Esq.
McDermott, Will and Emery
1101 Connecticut Avenue, N.W.
Suite 1201
Washington, D.C. 20035

Don R. Butler, Esq.
1225 South West Towers
Austin, Texas 78701

John W. Davidson, Esq.
Sawtelle, Goode, Davidson & Troilo
1100 San Antonio Savings Building
San Antonio, Texas 78205

Mr. G. Holman King
West Texas Utilities Co.
P.O. Box 341
Abilene, Texas 79604

Linda Aaker
Attorney General's Office
State of Texas
P.O. Box 12548
Austin, Texas 78711

James E. Monahan
Executive Vice President and
General Manager
Brazos Electric Power Cooperative,
Inc.
P.O. Box 6296
Waco, Texas 76706

Frederick H. Ritts, Esq.
William H. Burchette, Esq.
Law Offices of Northcutt Ely
Watergate 600 Building
Washington, D.C. 20037

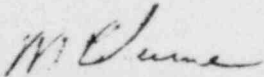
Michael I. Miller, Esq.
James A. Carney, Esq.
Sarah N. Welling, Esq.
Isham, Lincoln & Beale
4200 One First National Plaza
Chicago, Illinois 60603

David M. Stahl, Esq.
Isham, Lincoln & Beale
Suite 325
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Maynard Human, General Manager
Western Farmers Electric Cooperative
P.O. Box 429
Anadarko, Oklahoma 73005

Donald M. Clements, Esq.
Gulf States Utilities Company
P.O. Box 2951
Beaumont, Texas 77704

Robert M. Rader, Esq.
Conner, Moore & Corber
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006



Michael B. Blume
Counsel for NRC Staff