

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
(
Houston Lighting and Power) Docket Nos. 50-498 OL
Company, et al. (50-499 OL
(South Texas Project,)
Units 1 and 2) (

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MOTION TO REOPEN THE RECORD

The central issue in this proceeding is the character of Houston Lighting and Power Company (HL&P). A major inquiry of this issue is the managerial performance of HL&P.

Recently, the Texas Public Utility Commission (PUC) conducted hearings on an HL&P rate increase request. After the hearings, the hearing examiner ruled that:

- HL&P should be penalized and recover only \$200 million of the \$360 million HL&P invested in the now cancelled Allens Creek Nuclear Project because the long delay in the cancellation was "poor management,
- HL&P's approach to the PUC regarding recovery for Allen's Creek was "improper and imprudent,"
- the evidence of HL&P mismanagement of the South Texas Nuclear Project was "inconclusive" but the charge should be investigated thoroughly when STNP is finished. See Attachments 1 and 2.

Subsequently, the Commissioners accepted most of the hearing officer's recommendations and conclusions. But the Commissioners disagreed with the hearing officer and concluded that there was

sufficient evidence to find mismanagement of STNP. See Attachment 3. The Chairman of the PUC found the "company needs a major change in its management direction." He further suggested that the changes begin with removing members of the Board of Directors. Part of the financial conclusion by the Commission was a reduction of HL&P's return on equity as a penalty for mismanagement. Finally, a member of the Commission noted that "repeatedly management has blamed someone else" for their own failures."

The harsh criticism by the PUC is especially probative because the Commission is composed of people who regularly assess utility performance and, therefore, qualify as experts on this subject. Furthermore, the Texas Public Utility Commission is known nationally as very pro-utility. See Attachment 4. For this public utility commission to be so critical of HL&P is unusual and reflects how serious HL&P failures in management have been.

Of particular importance to Citizens Concerned About Nuclear Power (CCANP) is the close relationship between the findings of the PUC and findings proposed by CCANP in this proceeding. Corporate performance and corporate responsibility are central to the character inquiry and to the CCANP Findings of Fact and Conclusions of Law.

CCANP Findings of Fact and Conclusions of Law focus on the role of the HL&P Board of Directors, the absence of substantive actions by the Board in response to poor corporate performance, and the absence of any changes in the Board by the stockholders.

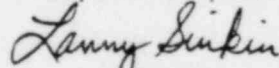
See e.g. CCANP FOF 4.3-4.7, 5.23, 8.7-8.72, 8.74-8.76, 10.3.1-10.3.2.

CCANP also stressed HL&P's failure to take responsibility for their corporate acts and tendency to blame others. See e.g. CCANP FOF 5.24-5.24.9, 6.7, 6.19.

Given the special expertise of the PUC and the relevance of their findings and conclusions to the licencing inquiry being conducted by this Board, CCANP urges the Board to reopen the record to permit taking of evidence regarding the PUC actions. The evidence available includes the hearing examiner's recommendations, the final order of the PUC, the transcript of the Commissioners discussion of their ruling in this docket, and possibly direct testimony by the Commissioners themselves.

For the above and foregoing reasons, CCANP moves the Board to reopen the record.

Respectfully submitted,



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Dated: December 6, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Certificate of Service

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I hereby certify that copies of Citizens Concerned About Nuclear Power's MOTION TO REOPEN THE RECORD dated December 6, 1982 have been served on the following individuals and entities by deposit in the United States Mail, first class, postage prepaid, on this 6th day of December 1982.

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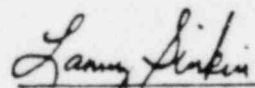
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Lanny Sinkin

Report alleges 'poor management'

Hearing examiner blasts HL&P

BY ANNE MARIE KILDAY
Chronicle Austin Bureau

AUSTIN — Houston Lighting & Power Co. officials were accused of "poor management" of the Allens Creek Nuclear Project, of having an "overly optimistic outlook" on the South Texas Nuclear Project, and of "improper and imprudent" actions in their \$336 million rate request before the Texas Public Utility Commission.

In a report to the PUC Wednesday, hearing examiner Angela Williams recommended that HL&P be "penalized" \$100 million on the Allens Creek Nuclear Project and that a \$1.7 billion "ceiling" be placed on the utility's share of the South Texas Nuclear Project.

Ms. Williams, who presided over two weeks of hearings on HL&P's request for a \$336 million annual systemwide rate increase, recommended that the company's rate hike be limited to \$188.3 million.

The Allens Creek and South Texas nu-

clear plants figured prominently in her recommendations to the three-member commission, which will make a final decision on the case Nov. 30.

While Ms. Williams said that evidence in the case "was inconclusive" about whether HL&P had mismanaged the South Texas project under construction near Bay City, she was highly critical of HL&P management decisions regarding the Allens Creek project and of the conduct of the company in its \$336 million rate request.

HL&P initiated plans for the Allens Creek project, which was to be located about 45 miles southwest of Houston near Wallis in Austin County, in August 1972. The plant was originally planned as a 2-unit, 2,400-megawatt plant. In September 1975, HL&P suspended plans for Allens Creek because of higher energy prices and an unstable national economy. Plans to construct one 1,200-megawatt unit at the site were reactivated in late 1976, and HL&P had proceeded with those plans un-

til cancellation of the plant in August.

When optimism over the Allens Creek project waned, HL&P hired Energy Management Associates in 1981 to re-evaluate the project. That study concluded that Allens Creek "has minimal economic benefit when compared to available alternatives," and that "the construction and operation of Allens Creek would be more costly for HL&P ratepayers than would construction of coal and lignite alternatives," Ms. Williams said in her report to the PUC.

Ms. Williams said the Allens Creek plant should have been canceled in early 1980, when various national nuclear issues were spotlighted and problems obtaining federal construction permits for the project became evident.

In her report to the commission, Ms. Williams said, "When one takes into account the fact that from 1976 to 1979, capital costs for nuclear plants continued to

(See HL&P, Page 19)

HL&P criticized for 'poor

(From Page 1)

escalate more rapidly than those for coal, the safety regulations promulgated by the NRC increased substantially as a result of the Three Mile Island incident, and Allens Creek became stalled at the Nuclear Regulatory Commission in 1979, the delay in cancellation can be characterized as clearly imprudent. Finally, HL&P's difficulties with the South Texas project should have been factored into its studies on Allens Creek."

In its request for a \$336 million rate hike, HL&P had sought to recover \$362 million of its \$388 million investment in Allens Creek, in annual installments over the next decade. HL&P officials had said in prefiled testimony in the case that the company would cancel the Allens Creek project only if the cities and the PUC allowed the company to recover its investment in the project.

Ms. Williams called the company's request for recovery of its investment in Allens Creek, without announcing a deci-

sion on whether the plant would be canceled "also improper and imprudent."

Although HL&P was "strongly recommending" that the Allens Creek project be canceled, Ms. Williams said, "The company walked a fine line on Allens Creek from the time this case was filed. Only when it was clear that its balancing act was working to its disadvantage did HL&P formally move to cancel, four days before the hearing. There can be no argument that in the testimony as prefiled, representatives at the highest level of HL&P management were at their equivocal best, merely 'recommending' cancellation."

"It was improper for this utility to approach its regulators (whether those regulators be the cities, staff, or this commission) in the context of a rate case, to 'test the waters' on what sort of monetary treatment its management decision would receive before that decision was made," she said in her report.

In her report, Ms. Williams said, "The examiner believes that the ratepayers

Houston Chronicle November 11, 1982

management' in report

should not compensate HL&P for poor management performance in this instance.

"Ratepayers should not be burdened with expenditures which were imprudently incurred because of management's deliberate attempt to avoid the facts concerning Allens Creek for over two years."

But Ms. Williams said evidence in the case was "inconclusive" as to whether HL&P had mismanaged the South Texas Nuclear Project.

HL&P is managing partner and owns 30.8 percent of the 2-unit, 2,500-megawatt South Texas project, which is co-owned by Central Power and Light and the cities of San Antonio and Austin. Austin voters have directed the Austin City Council to sell out of the project.)

The project's two units, which were originally scheduled to go into operation in October 1980 and March 1982, had an original cost estimate of \$1.4 billion. After cost overruns and construction delays plagued the plant, HL&P last year fired Brown & Root Inc. as construction engineer and replaced the firm with Bechtel Power Corporation. Bechtel now projects that the two units will cost \$5.7 billion, and will go on line in June 1987 and June 1989.

"The word mismanagement has been hurled about in this (case) indiscriminately. This is a serious charge, and one which should be supported by substantial evidence. On the issue of whether HL&P did mismanage STNP, the evidence in this case is inconclusive.

"The record shows that HL&P could have done a better job, but whether the company was imprudent and culpably neglectful in its role as project manager cannot be concluded," Ms. Williams said.

Ms. Williams said the question of blame for deficiencies in the South Texas project will be resolved in the lawsuit now pending between HL&P and Brown & Root. Since Brown & Root has counter-

sued HL&P for damages, "It can be expected that a fair assessment of blame associated with the project for the years 1975 to 1981 will eventually be decided in the courts," Ms. Williams said.

However, Ms. Williams quoted one attorney in the case who "so charmingly put it, while it is true that not all of the problems that beset the HL&P system can be laid at management's door, the time for HL&P to 'put up' or 'shut up' has arrived."

Ms. Williams said her recommendation that HL&P be limited to a \$1.7 billion "ceiling" on the South Texas project "indicates some concern about management of STNP. The purpose of the ceiling is to encourage management to be more efficient."

Because of a possibility that the second unit at the project "might be canceled," Ms. Williams also recommended that the utility commission order HL&P to notify the commission of any intention to cancel the project within six months of cancellation.

She also recommended that the PUC order HL&P to pass through to its ratepayers any amounts the courts may award HL&P in its lawsuit against Brown & Root, and not allow HL&P to charge its ratepayers for any amounts the courts may award to Brown & Root in its countersuit.

Injunction issued to halt newswoman's admirer

SAN DIEGO, Calif. (UPI) — A woman who reads the news on television won a permanent injunction in Superior Court against an amorous viewer who has deluged her with flowers, cards and telephone calls for more than two years.

Judge William Todd Jr. ordered Efraim Aguilar of Chula Vista to stop harassing and phoning Suzie Woodruff.

The Houston Po

By hearing examiner

PUC urged to slash HL&P rate request

By FELTON WEST
Chief, Post Austin Bureau

AUSTIN — A Texas Public Utility Commission hearing examiner Wednesday recommended slashing Houston Lighting & Power Co.'s request for a \$336-million annual base rate increase, urging that the three-member PUC allow it only \$188 million.

Examiner Eugene Williams' recommendation was only \$4.5 million higher than the rate increase which the city of Houston and more than 50 allied cities in the HL&P territory voted to give the utility, and only \$7 million more than the interim rate increase the PUC approved Oct. 27 to be in effect until a final decision is made.

Although precise rate figures the \$188-million revenue increase would produce were not available from either HL&P or the PUC

Wednesday, officials at both places said they would be only a few cents a month higher than the interim rates already in effect.

An HL&P official said that, based on the November fuel-adjustment charge and including franchise taxes, the summertime bill for a residential customer with central air conditioning using 2,000 kilowatts hours a month, would have been \$171.13 under the old rates, compared with an interim rate of \$184.94 now in effect. HL&P's \$336 million request would have boosted the new rate to \$193.42.

The wintertime bill for a 2,000-kilowatt-hour-using residence (typically one with electric heating) would be \$140.40 a month, compared with a \$149.60 bill under the interim rates now in effect and \$151.38 that HL&P requested.

The rate increase Williams recommended, giving HL&P about 56 percent of the addition-

al base revenue it requested, would amount to a rise of 5.6 percent in HL&P adjusted operating revenues for a test year that ended March 31.

But even though her revenue recommendation was close to what the cities approved, Williams left neither Houston officials nor HL&P managers happy. Both probably will protest parts of her recommendations when the three PUC commissioners meet Nov. 30 to finally decide the rate case and set permanent rates going into effect sometime in December.

However, Mark Zeppa, PUC staff attorney in the case, called Williams' report "well-reasoned" and said he would support it against attacks from both sides.

Williams displeased city officials by recommending that HL&P be allowed to start reco-

Please see PUC/page 77A

PUC urged to slash HL&P's rate request

From page 1

...vering from ratepayers what it spent on its abandoned Allens Creek Nuclear Project. The cities argued that since the nuclear project was not canceled before their councils considered the rate request, no recovery of the investment should be allowed in this rate case.

The examiner overruled that contention, but at the same time she criticized HL&P for not having canceled the project by January 1980, and recommended that \$160 million spent on the project since then be disallowed. She urged the PUC commissioners to let HL&P collect from ratepayers only \$200 million of the \$362 million investment they seek to recover.

Under her recommendation, the recovery would be "straight line" over 10 years, with only \$20 million included in rates for the first year. HL&P had requested the \$362 million be amortized in the rates over 10 years with greater amounts in the earlier years, starting with \$50 million this year.

Williams also urged the PUC commissioners not to let HL&P earn a return for its shareholders each year on the unamortized amount of the Allens Creek investment, as HL&P requested.

And she said the PUC should give ratepayers the benefit of whatever money HL&P salvages by selling equipment and fuel ordered for the abandoned plant, on which construction was never started.

Dealing with the controversial South Texas Nuclear project, for which HL&P is managing partner, Williams urged the PUC to order a 1.7 billion ceiling on HL&P's share of the project's cost and put the utility on notice that its ratepayers will not be made to pay for cost overruns past that figure unless HL&P can prove they are not due to mismanagement.

Williams took note of many charges of HL&P mismanagement of the long-delayed project, whose total cost has escalated from an estimated \$1.4 billion to \$5.5 billion, but said evidence as to mismanagement and who to blame is inconclusive now. She urged the PUC investigate that thoroughly when the STNP is finished and give ratepayers proper credit then.

If HL&P should recover damages to a pend-

ing lawsuit against Brown & Root, Inc., the STNP engineer that it fired, this money should be credited to ratepayers, Williams said.

And if Brown & Root should recover damages from HL&P in the lawsuit, the examiner said, HL&P shareholders — not ratepayers — should pick up that bill.

She urged the commission to order HL&P to give one year's notice when it intends to ask the PUC to include the STNP in its rate base, and to give the PUC six months notice before implementing "any substantial changes associated with the project."

Williams did recommend that, as HL&P requested, 100 percent of the cost of construction work in progress (CWIP) and nuclear fuel in-process (NFIP) be included in the company's rate base. She said that is necessary "to ensure the company's financial integrity."

She recommended a new, more stringent review of fuel costs for coal HL&P buys from Utility Fuels, Inc., a sister company with HL&P in Houston Industries Inc., a holding company. She urged the commission to make HL&P file quarterly fuel costs for affiliated interests and have them approved by the PUC staff before they can be passed on to ratepayers in the fuel-adjustment clause.

Williams approved a cost-allocation method that the PUC staff, HL&P and its industrial and commercial customers agreed to over objections of Houston and other cities in the case. The cities objected that the method shifted several millions of dollars of the rate burden from industrial and commercial customers to residential ratepayers. But Williams said the cities presented no evidence to support the cost allocation plan they preferred, which was offered by HL&P in city council hearings but withdrawn by HL&P in the PUC proceeding.

Williams also rejected a three-tier rate plan proposed by the cities, which they said would "even out" big differences in electric bills between winter and summer. She said the city plan was not "cost-based," would discourage rather than encourage conservation of electricity, and would aggravate an HL&P problem of peak-load growth.

HL&P should also be warned that if it incurs "abnormal outages" in providing power to customers in the future, the PUC will seri-

ously consider ordering neighboring utilities to serve existing or new customers in the HL&P authorized service area.

Houston Mayor Kathy Whitmire had both praise and criticism for the hearing examiner's recommendation.

"We are somewhat encouraged by the finding... although there are still several points on which we cannot agree," said Whitmire.

She said the city will contest some recommendations made by the examiner as they move to the full Public Utility Commission. Those objections include an allowance for the now cancelled Allens Creek Nuclear Project and a rate structure that the mayor said excessively burdens residential customers.

"The total \$188 million is close to what was recommended at the City Council," the mayor said. The City Council awarded HL&P a \$181.5 million increase in base rates, a total that the utility company appeared to the PUC.

Graham Painter, HL&P public relations manager, said company officials had not had time to study Williams' 100-page report, but probably will file exceptions to it by a Nov. 19 deadline.

"We were surprised at the amount (of the recommended rate increase)," Painter said. "We felt we had documented the challenges we face in serving the most rapidly growing part of the country."

Getting it right

... correcting an error.

The Status of the Anglo-Norman Knight, a lecture by Professor R. Allen Brown, King's College, University of London, will be at 1 p.m. Friday in the George R. Brown Room, M.D. Anderson Library at the University of Houston Central Campus. This is one of a series of free lectures sponsored by the UH department of history. The lecture time and room were listed incorrectly on page 26 of Sunday's Post. The Post regrets the error.

Regulators unleash attack on HL&P

By **BILL MCCANN**
American-Statesman Staff

Critics who have accused the Houston Lighting & Power Co. of mismanaging the South Texas Nuclear Project got an unexpected boost from the Texas Public Utility Commission Tuesday.

In slashing HL&P's request for a rate increase, commissioners accused the company, which is managing partner of the nuclear project, of being poorly run. Observers said it was the strongest attack the commission has made against the operation of a utility that it regulates.

Austin is a partner in the South Texas Nuclear Project, and last week the city's Electric Utility Commission suggested suing HL&P for mismanaging it.

"The company needs a major change in its management directions," Public Utilities Commission Chairman H. Moak Rollins said during Tuesday's meeting. He suggested the firm begin with some changes in its board of directors.

The three-member commission essentially adopted the technical report of a staff hearings examiner, with some changes by Commissioner George Cowden. The changes includ-

ed a 0.5 of a percent penalty on return on equity against the firm for what Cowden termed poor management.

The result is that a request made in June by HL&P for a yearly increase of \$336 million in revenues has been reduced to an estimated \$185 million.

Examiner Angela Demerie Williams initially recommended a rate increase of \$188 million, but that figure later was corrected to \$200 million. Cowden said his management penalty and other modifications will reduce the examiner's final figure by \$15 million.

At Cowden's request, the commission also dropped a recommendation by Williams to set a \$1.7 billion ceiling on the amount HL&P could charge its ratepayers for the two-unit, 2,500-megawatt South Texas Nuclear Project being built near Bay City. Setting a \$1.7 billion ceiling might inappropriately imply that the commission will allow that figure to be charged to ratepayers, Cowden said. The proposed ceiling is equal to HL&P's 31 percent share of the project, now estimated at \$5.5 billion.

Cowden said the examiner's report did not go far enough in criticizing the firm's management

problems, including delays in constructing the nuclear plant. HL&P is managing partner for the project.

The hearing record indicates many instances of mismanagement, including delays in the South Texas project and the recently canceled Allen's Creek nuclear project, Cowden said. "But repeatedly management has blamed someone else," he said.

In suggesting last week that the City of Austin sue HL&P, Austin's advisory Electric Utility Commission recommended charging that the Houston utility had mismanaged the nuclear project, and inviting two other partners, the Central Power & Light Co. and the San Antonio Public Service Board to join the suit.

Shudde Fath, vice chairman of the

advisory group, said the state utility commission's action reinforces the argument that the city should sue.

"Austin is not going to get the attention of HL&P until it has a lawsuit in one hand to go along with an offer to sell in the other," she said.

Fath was referring to Austin's attempt to sell its 16 percent share of the controversial nuclear project. HL&P is thought to be the only logical buyer at this point. Austin voters authorized the City Council last year to sell the city's share of the project.

HL&P officials have been saying all along that the firm has no plans to buy Austin out. Tuesday's substantial cut in HL&P's rate request could reduce even further the city's chances to sell its share to the utility.

Attachment 4

sometime after the first of the year. All of the workers have said they will continue their opposition. Their hope is that others will now come forward. However, the price they have paid may make that wish only a fond hope. There is no doubt the utilities and B&R will be all in their power to encourage silence.

Meanwhile, the twin towers are permanent fixtures on the ridge known as Comanche Peak. Whether they ever become radioactive or not will be decided by three men in Washington, D.C. who have never set foot in Somervell County. □

Betty Brink is a free-lance writer living in Kountze.

FOOTNOTES

¹The Comanche Peak Life Force, made up of anti-nuclear activists from Dallas, Fort Worth, Denton and Austin, scaled the fence twice in recent years, in non-violent protests against the plant. Trials were held in Glen Rose (TO, 12/14/79), the first ending in a hung jury, the second in convictions for 50 to 100 protesters.

²Still unresolved (among many hazardous conditions uncovered over the ten-year construction period) is the evidence introduced by CASE in June of a fracture crack running through the entire 7-foot-thick concrete base mat holding the reactor in unit 1 — a crack the utility failed to report to the NRC even though the fracture had been there since 1977. NRC inspectors never found the crack and knew nothing about it until CASE released the internal report sent by the utility during the discovery phase of the summer proceedings. Company officials reluctantly admit that "a crack" exists and say that the wording of the internal report "may have implied that it is in the base mat," but that it is actually in the doughnut shaped 8-foot-thick concrete wall that surrounds the reactor — the shielding. Juanita Ellis says there is "no doubt" as to the wording; it clearly states it is in the base mat. She further said neither the NRC nor the utility have "any documentation" to back up the claim that it is *only* in the shield.

The NRC, caught with egg on its face, says the problem is due to a "mistake in the company's paperwork," and that if the crack is in the shielding, it is "of little consequence," but if it is in the base mat, "it could be dangerous, particularly if water seeps in to corrode structural reinforcing steel."

There is no way to check the base mat now since the reactor has already been set, short of removing the reactor at a cost of millions. Even if the crack is only in the shielding, opponents point out, seismic disturbances, normal vibration, an internal accident, could add serious additional stress to the concrete, causing the "shallow crack" to suddenly become its weakest link.

³Two other intervenor groups dropped out this year due to lack of funds, after several years of work: ACORN, represented by West Texas Legal Services, and Citizens for Fair Utility Regulation, a Tarrant County-based environmental group.

⁴In a related ruling, the Board said that CASE had filed requests for design specifications for the pipe supports which were custom-designed for Comanche Peak, too late, and refused to rule on the manufacturer's claim of proprietary information protected from public disclosure. The design information could prove that "thousands of pipe supports have design flaws," both Walsh and Doyle said. "How do you decide if the plant has been designed properly, if things are held secret?" Doyle asked. But Miller's ruling dealt with procedural "timeliness," more important in NRC administrative proceedings than life and death matters, many say. The ruling had the effect, however, of allowing the design specifications to remain a secret.

⁵Once again, the Stiners' report had been filled with dozens of names of persons who could corroborate their charges, along with exact locations. The NRC released another "sanitized" version with all names deleted. This time the Board let it stand, ruling, somewhat convolutedly, that because the Stiners requested anonymity, that protection extended to the witnesses they named as well, even though the witnesses themselves had not requested such protection. While Darlene and Henry's names were deleted, their phone number was not. Nor was the name of this writer, who was contacted by Henry Stiner just before he took his allegations to the NRC.

The Texas Observer November 12, 1982

• '83 LEGISLATIVE PREVIEW •

A PUC in the public interest? Here's what it would take.

By Judith Farrell

Austin

WHEN PEOPLE TALK about rising utility bills, they use metaphors of power and beauty — we say that prices soar, spiral, and skyrocket. The actual phenomenon, as experienced by bill-payers, is hardly lovely. In the last five years, prices jumped 164% in Houston, 135% in Fort Worth, 121% in El Paso, 119% in Beaumont, 76% in Dallas — increases higher than the rate of inflation, and far higher than wage-earners' salary gains. As ratepayer distress rises proportionately, consumers all over the state are agitating for an end to the parade of price hikes, and they are challenging the notion that, at whatever cost, the user must pick up the tab. If they are customers of the big investor-owned utilities, their ultimate forum is the Public Utility Com-

mission, the regulatory agency charged with supervising the private electric power industry in the public interest.

Complain to the PUC about your utility rates, and the Commission will give you two answers: first, that you don't understand the situation; and second, that it's not the utilities' fault. Ratepayers, however, understand the price increases they have undergone with a special clarity all their own. And, if it's not the utilities' fault, they would like to know whose it is.

The PUC, in its public response, follows the industry account with mellifluous fidelity. It's all bad news for the customer: the message is a consistent, authoritative-sounding monologue with a large dollar sign at the end. Private utilities are under a lot of pressure, we are told. Sharp-eyed investors demand very high returns on their money, or they will desert the industry and leave us all to freeze in the dark. Contractors demand huge sums to build the big power

plants we need for future growth; banks demand high interest rates on the money borrowed for that construction. Fuel distributors demand ferocious prices. The message, in its basic form, is short and sharp: Texans have had it too easy; energy is expensive and will get more expensive. If we want it, we will have to pay a lot for it. And we will have to accept more pollution of our air, soil, and water, as utilities shift from gas to coal, or the even "dirtier" lignite. We cannot fault the utilities for any of this, say the regulators, and since protecting the financial health of the industry is the best way to sustain it, the PUC is really doing us all a favor by granting these high rate settlements.

That is a grim dilemma offered to the public by the PUC: the assertion that the only alternatives are worse than what we have, and the best we can do is adjust to the situation. If you're wealthy, you pay only about 6% of your income in energy costs, and your adjustment will probably be fairly successful. If you're middle-

income and currently spending 15-20% of your money on energy, by next year you may be joining the ranks of those whose utility bills exceed their mortgage payments. If you are lower-income, you're already spending 35% of your funds on these bills, and your "adjustment" means going without certain amounts of food, clothing, medicine, and other necessities. In any event, before you succumb quietly to the lesser of two unattractive evils, you deserve the assurance that those are really the only two choices available.

In fact, they aren't the only two choices. The PUC regulatory monologue displays two extraordinary characteris-

We may yet become a two-class system: those who are in the energy system and those who pay for it.

tics that suggest its limitations: it has destroyed any lingering idea of utility accountability to the public; and it seems to be talking about regulating the construction industry, rather than the generation of power. According to the legislation that created it, the PUC must "operate as a substitute for competition." Yet by passing onto users all the high costs of operation today, the PUC shields the utilities from precisely those difficulties and decisions which private business faces, routinely purchasing prosperity for them at the expense of ratepayers. And by employing rate-making policies based primarily on the value of the plant owned by a power company, the PUC practically guarantees that utilities will choose today's unbelievably expensive construction over any of the other energy sources available. Both practices, by reflecting back to utilities their own traditional concerns for secure profit margins and stable predictability, not only fail to act as any sort of competition at all, but stifle it rather effectively.

But as the cost of power rises, the possibility of the PUC as a substitute for competition gain; both plausibility and pressing necessity. The PUC cannot "compete" to hold down fuel and construction costs — but it could, and should, compete in the arena of ideas.

What we have instead is a hidebound body whose regulatory policy is not only industry-oriented; it is based on tried and true orthodoxies hoary with noncompetitive convention. It represents an industry outlook that worked well enough in the past, when power consumption was growing faster than the economy, when expansion meant declining unit costs, and large central plants meant prosperity; when a large central power plant

took three years to build, and came in at something roughly like budget. It made sense to build, it made sense to take large, long-term fuel contracts, it made sense for consumers to finance future plans.

Since 1970, that has all made increasingly less sense. Current conditions guarantee that "new" power is three to five times as expensive as "old" power; a new plant takes seven to 10 years to build; and cost overruns that double or triple the estimate cost of a new facility are routine. A new lignite plant for Central Texas was estimated to cost \$351 million when planned; the most recent estimate of its actual cost is \$700 million. The Comanche Peak nuclear project, estimated at \$779 million in 1972, is now projected to cost \$3.34 billion, and its original estimated price for power, 3.5¢ per kilowatt, has climbed to 6.1¢. The long-stalled STNP will now cost six times its original estimate, and the Allens Creek nuclear facility recently cancelled has gobbled up well over \$300 million just in the preliminary planning stages.

Since even a big utility cannot handle such astronomical costs, our construction-based ratemaking practices have flexed to meet the problem — we have CWIP, the practice of including in the rate base a portion of the cost of construction work in progress. In Texas, we get more of it, and we get it sooner, than in any other state. About 60% of our recent rate increases are CWIP; Texans pay about \$250,000,000 a year for plants that won't be completed for years, and may in fact never be completed at all. CWIP, which critics refer to as "forced ratepayer investment," has ballooned out of all proportion to the modest aid it was intended to be. By shielding utilities from the most important "timely price signal" in the industry today, PUC regulatory principles hamper the development of any truly competitive critical viewpoint.

Thirty-nine states allow charges for new construction. Many impose limits on the dollar amount of what can be passed through. Texas, however, has no limit. "Those charges should be passed on only when a company is in financial jeopardy," Rep. Ralph Wallace, a Houston Democrat contends. "The way it is now, there's no pressure for Houston Lighting and Power to complete the South Texas Nuclear Project."

The same lack of competitive pressure from the PUC holds for other aspects of regulation which are disturbing consumers today. The automatic fuel adjustment pass-through is a mockery when companies are not required to submit technical proof that they are making the best choices for efficiency and economy. Be-

sides, utility ownership of fuel suppliers is increasing — and the incentive to hold fuel prices down is weakened immeasurably when purchaser and supplier are parts of the same corporate structure. It's a ready-made "double-dipping" situation for corporate profits; and a utility with a heavy investment in a particular fuel is unlikely to show much interest in investigating alternatives.

If PUC regulatory interests make our power industry sound like the construction business, they also describe it in investment terms, and place a high priority on keeping stocks attractive. We are the darlings of Wall Street for our "warm regulatory climate" and our pro-growth agency. It was, in fact, PUC chairman H. M. Rollins, a Clements appointee, who assured security analysts in New York last August that in Texas, "the groundswell of dissatisfaction has not reached the level where we are that concerned about it."

Texas is the only state utility commission that receives top marks in a ranking of regulatory agencies prepared by Merrill Lynch & Co. Saloman Brothers Inc., which also rates regulatory agencies, assigns only Texas and Indiana its highest ranking. It's also significant that the only utility company in the nation whose bonds are classified AAA by Standard and Poor Corp. and Moody's Investor Service Inc. is in Texas — Dallas-based Texas Utilities Co., parent of DP&L, TP&L, and TESCO.

Our state's emphasis on construction and finance has put us a decade behind other states in the development of alternatives.

"The Texas commission is pro-growth and pro-business as Texas is in general." Laurie Gilbert, a rating officer at Standard & Poor, told the *Dallas Times Herald* recently. But we pay a high price to win investor praise, both in the bills we pay and in the effect on the economy of such gigantic pressures on the money market. Experts have begun to describe the "massive transfer of wealth" occurring as the energy industry gobbles up the investment capital of the nation. We may yet become a two-class system: those who are in the energy industry, and those who pay for it.

Our state's emphasis on construction and finance has put us a decade behind other states in the development of alternatives. And it seems clear that the regulatory policies operate as a powerful incentive to keep things that way. As one

wit has observed, if the only tool you have is a hammer, you tend to treat everything as a nail.

What then are the alternatives? We can say confidently that power generation 50 years from now will be radically different from what it is today, even if we don't know exactly how. The interval between will be a major, probably messy and disruptive, perhaps exciting transition. Several things seem certain: we should avoid measures which (1) require lots of capital; (2) take years to achieve; (3) lock the industry into certain inflexible technologies. We should seek alternatives which (1) are flexible; (2) do not require 10 years to completion; (3) are environmentally sensitive; (4) promise technological progress; (5) tend to generate jobs locally and keep rate-payers' money within the community.

Where are the new ideas about electric power? Not at the PUC. Every time a city decides to try generating power from its trash, or a farmer experiments with a windmill for irrigation, there is a small

enactment of the alternatives to the utilities' grim dilemma. Every homeowner who insulates an attic or buys a high-efficiency refrigerator contributes to the new possibilities for energy in Texas, knowingly or not. When the management of a factory decides to co-generate electricity from its own excess heat, or a small business requests passive solar design features in its new office building — then the nature of the utility industry changes. The "customer," of whatever size or class, is then not simply the passive recipient of kilowatts passed through a meter, but an active participant in the relationship, making choices about how the energy dollar is spent.

This relationship suggests two major implications. First, the public needs to be more actively involved in the rate-making process. If the appliances and homes we choose, the way we get to work, and the patterns of our new suburbs are all part of the energy equation, we need a diversity of voices raised in

the debate — a chorus, not a monologue. And if we come to see the problems of power supply as a subtly shifting range of supply and demand options, we need rate-based policies that offer incentives to the utility industry to pursue alternatives much more vigorously than it has done so far.

Our utilities know more about the alternatives than you or I will ever know, or want to know. Conservation, co-generation, solar, biomass, heat storage, load management — they've heard it all. Texas companies are very timid about these options, and tell us they're marginally useful but not seriously interesting. State predictions suggest that, if we worked at it, conservation and renewables as a group might possibly account for 20% of our energy by the end of the century. Yet the California Energy Commission, operating under a vigorous commitment to alternatives, confidently predicts that 63% of its state's energy will come from those sources in the year 2000.

Recommendations

✓ *Election of Commissioners.* Unlike the current commissioners, elected utility commissioners from single-member districts will necessarily maintain some accountability to the public they are elected to represent and paid to serve. No race would be more clearly understood by voters than the election of those who will vote on their utility rates. And election will help prevent that "capture" of the agency by industry interests which tends to happen in regulatory situations.

✓ *Creation of an Independent Public Counsel.* The PUC represents "the public interest," but that is defined as the sum of all commercial, industrial, and private interests — and also the utilities. Industrial and commercial customers send paid representatives to rate hearings to protect their interests; utilities include the cost of their very thorough representation in their rates. Only residential ratepayers are without representation. The PUC is "lenient" about admitting independent advocates to hearings, but there is no mechanism for paying for them, or organizing a focus for private citizens. An office of public counsel with an adequate staff could be

funded through the gross receipts tax which, collected from utility revenue to fund the PUC, generates 5 times more than is used.

✓ *Requiring Management Audits.* The "management audit" is a fairly new regulatory tool, and a very good idea. A licensed monopoly, even when investor-owned for profit, should be answerable to the public for the quality of its decision-making. A management audit asks how well a company is run on all levels, from personnel to planning, from system organization to rate structure. Federal standards suggest a management audit for each utility every four years, with follow-up audits on trouble spots every two years. Gulf States Utilities recently declined a management audit on the grounds that it would cost \$1 million; but that represents about 0.3% of its annual revenue, and a management review might easily save ten times as much.

✓ *Construction Work Costs and Approval of Building Permits.* Permits to build new plants are currently issued without the rigorous investigations required in many other states. Thorough environmental impact studies, careful investigation of alternatives to

construction, and rigorous many-factored load forecasting data should be required before a utility could expect even minimal approval to plan a new plant. This policy would help to prevent ruinously expensive plant cancellations, hold down cost overruns, and, most valuable of all, could well lead to decisions not to build, when preliminary studies proved there were better alternatives. Severe limitations on approval of CWIP funding — lower percentages for shorter times, with greater utility accountability — would also encourage innovation, as well as hold costs down. A lucrative CWIP award is not simply one of several possible ways to reimburse a utility for costs: it operates as a powerful tool of policy to promote construction at the expense of other options.

The Public Utility Commission has not developed as a vigorously independent agency bringing its own ideas to the utility industry and setting standards which they must stretch to reach. But it will respond to clear legislative mandate. Ratepayers should look to the legislature to amend the Public Utility Regulatory Act — and they should demand it.

J. F.

That discrepancy is the measure of the difference in the two states' energy policies. While they operate under construction-based policies, our utilities have serious disincentives to innovation. HL&P could get \$15 million a year for over 5 years in CWIP for Allens Creek, but has not vigorously pursued co-generation, though the industry in its area offers exciting possibilities. The millions of dollars gone for interest and cancelled plant, if it had been spent to develop co-generation, could be working for them now, and their program of alternatives could have been years ahead. But our regulatory policies give no clear secure way to handle the technical and financial problems involved, so they are just labelled insuperable. Yet new regulatory principles developed in Pennsylvania to encourage long-term contracts for co-generation are stimulating activity

that is expected to save a whole generation of plant construction there.

So we have a regulatory problem, as much as we have an energy problem. And the best ideas are happening outside the regulatory structure. The dour monologue of the PUC with its grim options must be displaced by an ongoing dialogue with the public about the ways to manage energy, and its place in our lives.

How to begin? The Public Utility Commission is undergoing Sunset Review this year, with its first major public hearing scheduled for November 10. That review process, with its emphasis on public participation, presents the opportunity to begin the dialogue. Elected public membership on the Commission, a public counsel to represent rate-payers, legislation to limit construction, and a serious commitment to pursuing

the alternatives would widen the energy debate, promote the competition of ideas, and involve the public in the choices being made at the Commission. □

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• POLITICAL INTELLIGENCE •

✓ He criticizes the policies and ideas of House Speaker Thomas P. "Tip" O'Neill, Jr., and Majority Leader Jim Wright, urges Americans worrying about the economy "to stay the course," and points out that between Reaganomics and himself "there's not a difference between the two."

That's no Republican talking; that's Phil Gramm on his recent tour of 21 Texas cities campaigning for Reaganomics. Although John Tower has given no indication he plans to retire in 1984, Gramm was obviously positioning himself on the tour for a run for the Senate — most likely as a Republican. He has said that if House Democrats meeting in December kick him off the House Budget Committee, which is likely, he will consider two options: switching parties or returning to Texas A&M at the end of the next congressional session to resume teaching economics.

Tower has raised more than \$1 million this year in the event he files. He has been rumored to be in line for a White House Cabinet position if he decides against another statewide campaign.

✓ Former Gov. Dolph Briscoe now says he'll make the race to replace Tower in 1984, and supporters say Janie's all for it.

✓ A good idea from Billy Clayton: the outgoing House Speaker told a legislative ethics committee recently that legislators who are lawyers should be allowed to appear before state agencies for private clients, but only without pay for the legal service. Clayton said such interven-

tion often appears to be a conflict of interest. Under current rules, payment can be accepted for such services.

✓ Workers paid the minimum wage set by Texas law for work not covered by the federal minimum wage law are the lowest paid employees of the nation's 10 most populous states. Texas law guarantees at least \$1.40 an hour. The measure has not been amended since it was passed by the legislature in 1969 and reached the current base two years later. Workers in California, New York, Pennsylvania, Illinois, Michigan, and New Jersey receive a minimum of \$3.35 an hour, the same rate as the federal minimum wage. In North Carolina and Ohio, state laws require employers to pay employees at least \$3.10 and \$2.30 an hour, respectively. The North Carolina figure will increase to the federal base level next year.

Rebecca Harrington, Texas director of the United Farm Workers, says raising the state's minimum wage law is one of the union's top priorities, but no one is too optimistic about the effort.

✓ Sen. Lloyd Bentsen and Cong. Phil Gramm led the list of recipients of congressional campaign donations from oil and gas industry political action committees, according to a report from the Citizen-Labor Energy Coalition. PACs backed by oil and gas companies, executives, and investors, according to the report, have contributed more than \$6.8 million to congressional candidates through Oct. 13. The coalition said Bentsen received \$143,408 from the oil

and gas PACs, the most among 12 Senate candidates listed, and the only Democrat among the top dozen. Gramm received \$83,408. Cong. Jack Fields received \$48,115, which ranked him fifth. Cong. Jim Collins was not listed among the top 12 recipients.

The coalition said the most generous committee was the Dallas Energy Political Action Committee, donating \$237,000. The Dow Chemical Co. PAC was second with \$223,900, the LTV Corporation PAC was third with \$222,173, and the Tenneco PAC fourth with \$202,250. Robert M. Brandon, executive director of the coalition, estimated the oil and gas PACs' total donations will be \$8 million when the reports are complete.

✓ The final decision of Houston Lighting & Power Co. to cancel its proposed Allens Creek Nuclear Project 40 miles southwest of Houston dramatizes in Texas the national trend against nuclear power. HL&P said it has an "indication" from the state Public Utility Cmsn. that it may be permitted to recover its \$362 million investment in the abandoned plant by rate increases spread over ten years.

✓ Three of the nation's ten poorest counties are in Texas, according to the Oct. 18 issue of *U.S. News and World Report*. Starr County is third on the list with a per capita income of \$2,668. Maverick County is seventh with a per capita income of \$3,100, and Zavala County is ninth with a per capita income of \$3,202.

The two poorest counties on the list