

NUCLEAR REGULATORY COMMISSION

DOCKET NO. 50-446A

TEXAS UTILITIES ELECTRIC COMPANY

NOTICE OF NO SIGNIFICANT ANTITRUST CHANGES

AND TIME FOR FILING REQUESTS FOR REEVALUATION

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensee's activities or proposed activities have occurred subsequent to the antitrust operating license review of Unit 1 of the Comanche Peak Steam Electric Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon the determination of the events since the issuance of the Comanche Peak Steam Electric Station, Unit 1 (Comanche Peak 1) operating license, to TU Electric Company,

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the staffs of the Inspection and Licensing Policy Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff," have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the operating license review of Comanche Peak 1 are not of the nature to require a second antitrust review at the operating license stage of the application for Comanche Peak 2.

In reaching this conclusion, the staff considered the structure of the electric utility industry in northeastern and north central Texas, the events relevant to the Comanche Peak construction permit review, the antitrust settlement subsequent to the construction permit review and the Comanche Peak 1 operating license review.

The conclusion of the staff analysis is as follows:

In an effort to identify any changed activity on the part of the licensee, the staff requested updated Regulatory Guide 5.3 information in December 1991. Notice of receipt of this information was published in the Federal Register and the staff received comments from two electric power cooperatives, Cap Rock Electric Cooperative, Inc. and Cajun Electric Power Cooperative, Inc.

The staff reviewed the comments from Cap Rock and Cajun and fully considered them in the context of the Commission's significant change review. The staff determined that the issues raised by Cap Rock addressed compliance or contractual matters, not licensing matters pertinent to the staff's §105c(2) operating license significant change review. Moreover, the issues of concern to Cap Rock were being litigated in a manner that ultimately should resolve the concerns raised by Cap Rock. The staff determined that the concerns raised by Cajun in its comments to Regulatory Guide 9.3 were issues that should be addressed by the FERC, not the NRC, and that there was an ongoing forum at the FERC in which Cajun could seek redress from its concerns pursuant to participation in the Texas DC intertie.

TU Electric experienced changes in its business since the Comanche Peak 1 operating license review; however, the changed activity was in large part due to the changing electric bulk power industry and the role of power generators within this industry. The staff did not identify any changes in TU Electric's activities that would require a remedy by the NRC in this licensing action. None of the changes identified meet all three of the Commission's Summer criteria.

Section 105c(2) requires a formal antitrust review at the operating license stage only in the event of significant changes in the licensee's activities since the previous antitrust review. The NRC established criteria for identification of significant changes in its Summer decision and delegated the authority to make the significant change determination to the staff. The staff's analysis of the changes in the licensee's activities has not identified any changed activity that could be remedied in the Commission's licensing process as envisioned in Summer. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 2 of the Comanche Peak Steam Electric Station.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensee's activities or proposed activities since the completion of the antitrust operating license review of Unit 1 of the Comanche Peak Steam Electric Station.

Signed on September 17, 1992 by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 within 30 days of the initial publication of this notice in the Federal Register. Requests for reevaluation of the no significant change determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as informational facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

Dated at Rockville, Maryland, the 21st day of Sept. 1992.

FOR THE NUCLEAR REGULATORY COMMISSION

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