

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

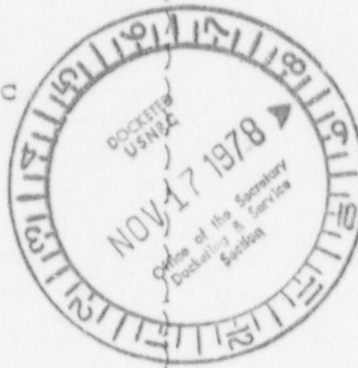
In the Matter of

TEXAS UTILITIES GENERATING  
COMPANY, et al.

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

HOUSTON LIGHTING & POWER  
COMPANY, et al.

(South Texas Project,  
Units 1 and 2)



Docket Nos. 50-445A  
50-446A

Docket Nos. 50-498A  
50-499A

MOTION FOR PARTIAL CONSOLIDATION

By its Order of October 19, 1978, the Board set a prehearing conference in the Comanche Peak proceeding for 9:30 a.m. on December 5, 1978. By Notice dated November 8, 1978, the Board rescheduled a prehearing conference in the South Texas proceeding for 3:00 p.m. on December 5, 1978, and scheduled a conference of counsel in both proceedings regarding consolidation for 2:30 p.m. that same day.

Texas Utilities Generating Company, Applicant in the Comanche Peak proceeding and an intervenor in the South Texas proceeding, hereby moves the Board <sup>1/</sup> to consolidate, as appropriate, discovery

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<sup>1/</sup> The Board presiding in the South Texas operating license antitrust proceeding has the same members as the Petitions Board in Comanche Peak and presumably will be named to preside in the Comanche Peak operating license antitrust proceeding.

and evidentiary hearings, but not the initial decisions, in the two proceedings, as more specifically proposed below.

### I. DISCUSSION

The Nuclear Regulatory Commission's Rules of Practice, 10 C.F.R. §2.716, provide, in pertinent part:

"On motion and for good cause shown . . . , the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings . . . if it is found that such action will be conducive to the proper dispatch of [the NRC's] business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart".

Thus, the following factors are to be taken into account in considering a motion to consolidate proceedings.

- a. Whether good cause has been shown.
- b. Whether consolidation will be conducive to the proper dispatch of NRC business and to the ends of justice.
- c. That the consolidated proceedings will be conducted in accordance with the other provisions of this subpart.

Consolidation in NRC practice does not necessarily connote merger of all phases of two or more proceedings into a single proceeding. In the procedures for duplicate plants (10 C.F.R. Part 2, Subpart D) for example, the Commission has authorized both separate hearings on site-specific safety and environmental matters<sup>2/</sup> and antitrust aspects (10 C.F.R. §2.402(a)) and consolidation for hearing pursuant to 10 C.F.R. §2.716 of individual

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<sup>2/</sup> Duplicate plants generally involve different applicants utilizing the same design at widely-scattered sites, so typically antitrust or environmental proceedings would have nothing in common while many safety aspects would be identical.

phases of proceedings to consider common issues (10 C.F.R. §2.402(b)). Consolidation of some issues for hearing, separation of other issues for hearing, and, thereafter, issuance of separate initial decisions was effected by the Licensing Board in Matter of Duke Power Company (Perkins Nuclear Station Units 1, 2 and 3 and Cherokee Nuclear Station Units 1, 2 and 3), Docket Nos. STN 50-488 - 50-493 (see Order of July 6, 1977 therein and Matter of Duke Power Company (Cherokee Nuclear Station Units 1, 2 and 3), LBP-77-74, 6 NRC 1314 at 1316 (1977)).

That Consolidation is a flexible tool in the hands of this Board may be inferred from the foregoing. Specifically, as may be seen from the foregoing, the Commission has viewed in other contexts that consolidation pursuant to 10 C.F.R. §2.716 includes partial consolidation of common issues for the hearing phase, with separate hearings on matters which are peculiar to one or more applications and with separate initial decisions.

A. Good Cause

There is good cause for partial consolidation here in that many issues are the same, most of the parties are the same, and the same Board is presiding in both proceedings. Economy in the utilization of governmental resources as well as the resources of those parties participating in both proceedings militates in favor of consolidation. Issues not common to both proceedings can be heard separately, especially where an issue peculiar to one proceeding threatens to delay both proceedings unless heard separately. Prompt resolution of any outstanding antitrust issues



is essential in both proceedings.<sup>3/</sup> For purposes of discovery and the trial of many central issues, as well as memoranda of law and possible stipulations of fact, partial consolidation will be more conducive to the proper dispatch of the Commission's business with reasonable expedition than would separate sequential or concurrent proceedings. It may be that one proceeding may experience significant delays not experienced in the other proceeding. The Board should implement consolidation flexibly such that, if circumstances warrant, the proceedings may be timely severed for some or even all issues. In any event, separate initial decisions should be issued.

B. Dispatch of NRC Business; Ends of Justice

The rights of all parties will be protected in the event of partial consolidation, given the flexibility of the consolidation procedure. Since there are some parties to one proceeding who are not parties to the other, the Board may be required to exercise its broad powers under 10 C.F.R. §2.718 to control the participation of such party and to control the presentation of evidence bearing on its interest and to control the presentation of evidence bearing on its rights or those of other parties. The partial consolidation will avoid unnecessary delay and effort and eliminate

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<sup>3/</sup> Operating licenses are needed by the late summer of 1980.

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unnecessary paperwork, and can be managed in such a manner as to protect the rights of all parties, it will serve the ends of justice and should be ordered.

C. Other Provisions of Subpart G

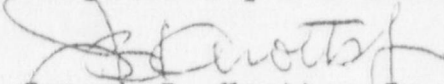
The proceeding, as partially consolidated, can and should be conducted in accordance with the other applicable provisions of Subpart G "Rules of General Applicability" of the Commission's Rules of Practice, 10 C.F.R. Part 2. In this regard, the powers of the Board set forth in 10 C.F.R. §2.757 with regard to the prevention of unnecessary delay and of the accumulation of an unnecessarily large record would be fully applicable, as would its authority to summarily dispose of some or all issues in one or both proceedings. Likewise, the provisions regarding stipulations (10 C.F.R. §2.759) would remain fully applicable to all or part of one or both proceedings.

In this sense would the South Texas and Comanche Peak proceedings merge into a single proceeding simply because discovery and evidentiary hearings on many issues would be consolidated. Separate hearings could be held on matters peculiar to each application on motion for good cause shown, or at the initiative of the Board to avoid prejudice to any party or as the ends of justice may require. Since there would be separate initial decisions, an appeal by a party to one proceeding would not necessarily result in briefing obligations on the parties to the other proceeding.

II. CONCLUSION

For the foregoing reasons, the Board should order partial consolidation of the two proceedings on the flexible terms discussed herein.

Respectfully submitted,



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Date: November 16, 1978



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the matter of	)	
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	)	
(South Texas Project, Units	)	
1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the "Motion for Partial Consolidation" in the captioned matters were served upon the following persons by deposit in the United States mail, first class postage prepaid, this 16th day of November, 1978.

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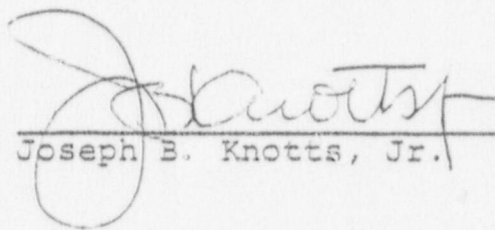
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