



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

DD-87-10

JUN 25 1987

Docket Nos.: 50-445
and 50-446

Robert A. Jablon, Esq.
Spiegel & McDearmid
1350 New York Avenue, N.W.
Washington, DC 20005-4798

Dear Mr. Jablon:

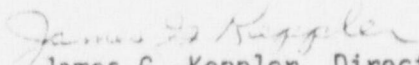
This is in response to your "Request for Modification of Licenses" (petition) dated March 11, 1987 filed by you before the Director of the Office of Nuclear Reactor Regulation, pursuant to 10 CFR §2.206 of the Commission's regulations, on behalf of the Brazos Electric Cooperative, Inc. (Brazos).

Your petition was referred to the Office of Special Projects for consideration because that office is now responsible for all licensing activities related to the Comanche Peak Steam Electric Station. The petition has been duly considered under 10 CFR §2.206 and, for the reasons stated in the enclosed "Director's Decision under 10 CFR 2.206," the petition has been denied.

A copy of this decision will be filed with the Secretary of the Commission for its review in accordance with 10 CFR §2.206(c). As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

We have also enclosed a copy of the notice which is being filed with the Office of the Federal Register for publication.

Sincerely,


James G. Kepler, Director
Office of Special Projects

Enclosure:
As stated

cc w/enclosure
See next page

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Robert A. Jablon, Esq.
Spiegel & McDearmid

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Texas Utilities Electric Company

JUN 25 1987

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Texas Utilities Electric Company

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Honorable George Crump
County Judge
Glen Rose, Texas 76043

Honorable Milton Meyer
County Judge
Hood County Courthouse
Granbury, Texas 76048

(NRC) order licensee and license applicant Texas Utilities Electric Company (TU Electric) to assume co-owner/co-applicant Brazos' ownership interest in the Comanche Peak Project by purchase at Brazos' net book cost, and for such other relief as may be appropriate. The basis for the relief requested was the allegation by Brazos that TU Electric has made material false statements to the Atomic Safety and Licensing Boards (Boards) presiding over the Comanche Peak operating license and construction permit extension proceedings. For the reasons which follow, Brazos' Petition pursuant to 10 C.F.R § 2.206 is denied.

DISCUSSION

In its Petition, Brazos asserted that law firms hired by TU Electric have specifically and repeatedly informed the Commission and its Boards that they represented all Comanche Peak co-owners, including Brazos. Brazos further asserted that, in separate state court litigation involving the co-owners of the Comanche Peak Project, TU Electric has argued that attorneys retained to appear before the NRC have in fact never represented Brazos in any traditionally recognizable attorney-client relationship. Brazos argued, therefore, that TU Electric's representations to the NRC, through its legal counsel, have been material false statements. Such material false statements, and the situation created with respect to the representation issue in the NRC proceedings, Brazos argued, cast doubt on the veracity of all of TU Electric's statements as they pertain to Brazos. Brazos submitted that TU Electric's assertions of its representation of Brazos as a co-owner/co-applicant, through its licensing counsel in proceedings before the NRC, constitute intentional material false

statements under Section 186 of the Atomic Energy Act and thus are a sufficient ground under 10 C.F.R. § 2.202 for the Commission to modify the construction permit to require that TU Electric assume Brazos' interest in the Comanche Peak Project. Brazos further argued that these false representations are clearly information that a reasonable NRC Staff member should consider in performing the task of evaluating the character and management integrity of an NRC permittee, fuel licensee and operating license applicant such as TU Electric.

For the following reasons, I have decided to deny Brazos' Petition. First, no health and safety issues have been identified in the Petition which warrant the requested relief. While specific false statements have been alleged, there has been no showing that these alleged false statements warrant any action. Brazos suggests in its Petition that its allegations bear upon the character and management integrity of TU Electric. However, the Petition presents no particulars in this regard. The Petition fails to identify any instance where information submitted to the NRC by TU Electric contained a material deficiency. The Petition also presents no information to support an argument that any potential improprieties on the part of counsel for lead applicant TU Electric are linked to TU Electric management itself and thus call into question the character and management integrity of TU Electric. Thus, it is inappropriate at this time to modify either the outstanding construction permits or special nuclear material licenses for the Comanche Peak Project due to health and safety concerns. ^{2/}

^{2/} This is particularly so since the facility is still under construction.

Secondly, under well-established Commission principles, relief under 10 C.F.R. § 2.206 is not available when, as here, there is an existing forum available to the petitioner in which issues raised should more logically be presented. ^{3/} Where a Board is presiding in a proceeding with jurisdiction to consider the matter, a party to that proceeding may not choose to avoid that forum by use of 10 C.F.R § 2.206. ^{4/} The issues underlying Brazos' Petition in essence challenge the sufficiency of the representation by the applicants in the Comanche Peak proceedings. In particular, Brazos contended that lead applicant's counsel represented to the Board that it represented all applicants in the proceeding which Brazos claims was not the case in that it, Brazos, was not represented by counsel for lead applicant. This is a matter within the power and responsibility of the Boards themselves to address rather than the Director of an NRC Office. See 10 C.F.R. §§ 2.713, 2.718(e), (m). This is particularly so where the Petitioner, here Brazos, is a party to the proceedings, currently pending before the Board, in which the alleged

^{3/} Brazos should understand that the NRC Staff views it as a party to the Comanche Peak proceedings with the duty to bring relevant issues to the attention of presiding Boards. To the extent an agreement which Brazos has entered into may purport to limit its duties to the Board, such agreement must yield to Brazos' duty to fully disclose.

^{4/} Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 & 2), CLI-81-6, 13 NRC 443, 446 (1981).

false statements ^{5/} were made. To the extent then that Brazos wishes to raise issues regarding the sufficiency of the representation by lead applicant TU Electric before presiding Comanche Peak Boards or the character or management integrity of TU Electric, Brazos should submit a specific request to such Boards. ^{6/} Since Brazos has not identified any public health and safety issues that warrant action by the staff, deferral to the Boards is appropriate.

Finally, I note that even if all of Brazos' allegations were true, the specific relief requested by Brazos, i.e., a buy-out of Brazos' ownership interest is beyond my authority to direct. ^{7/} For the above reasons, I am denying the Petition.

^{5/} The "false statements" identified by Brazos relate solely to the scope of representation of the several co-owners/co-applicants. Since these statements do not involve matters which affect the public health and safety, the environment, or the common defense and security, they would not be considered "material false statements" under Section 186 of the Atomic Energy Act.

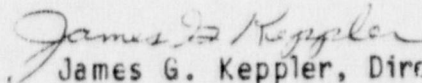
^{6/} One Atomic Safety and Licensing Board has considered issues related to the Brazos' Petition and issued a Memorandum and Order discussing them. Texas Utilities Electric Company, et al. (Comanche Peak Steam Electric Station, Units 1 and 2), Docket No. 50-445-CPA. Slip opinion, May 4, 1987. To the extent that Brazos is not satisfied with the Board's consideration of issues to date, it may pursue the matter with the Board.

^{7/} The NRC's authority does not cover the contractual arrangements between TUEC and the other owners except insofar as they might affect matters affecting public health, safety, and the environment, or the common defense and security. The issue of the adequacy of TUEC's representation of the minority share owners, as presented in Brazos' Petition, has no effect on these matters. Further, even if it were found that TUEC had made material false statements, the relief sought by Brazos does not appear to be warranted or appropriate. Rather, some other remedy would have to be fashioned to ensure that information provided by all co-applicants or co-licensees would be complete and accurate. The relief sought by Brazos would have no such effect.

CONCLUSION

The relief requested in the Petition is denied. No specific health and safety issues have been identified in the Petition. To the extent that the Petition alleges misrepresentation on the part of counsel for TU Electric as lead applicant before the Boards sitting to resolve issues regarding the Comanche Peak facility, the issue is more logically addressed by the sitting Board. Brazos, as a party to the proceedings before the Board, should bring this issue to the Board's attention. Furthermore, the specific relief requested by Brazos is inappropriate.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 C.F.R § 2.206(c). As provided in 10 C.F.R. § 2.206(c), this Decision will become the final action of the Commission twenty-five (25) days after issuance unless the Commission elects to review this Decision on its own motion within that time.


James G. Keppler, Director
Office of Special Projects

Dated at Bethesda, Maryland
this 26th day of June, 1987