

NUCLEAR REGULATORY COMMISSIONDOCKET NO. 50-445ATEXAS UTILITIES ELECTRIC COMPANY, ET AL.NOTICE OF NO SIGNIFICANT ANTITRUST CHANGESAND 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 licensees' activities or proposed activities have occurred subsequent to the antitrust construction permit 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 an examination of the events since the issuance of the Comanche Peak Steam Electric Station construction permits to TU Electric Co., et al. and the consummation of the settlement agreement before the Commission, the staffs of the Policy Development and Technical Support 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 construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

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 and the antitrust settlement subsequent to the construction permit review.

The conclusion of the staff analysis is as follows:

Prior to the antitrust settlement agreement before the Nuclear Regulatory Commission (NRC), competition for the purchase or sale of power and energy and related ancillary services in the Texas bulk power market was primarily limited to intrastate power transactions. This intrastate power network has remained intact for many years-- notwithstanding the fact that some power entities doing business on the perimeter of the state of Texas as well as some systems within the state have expressed interest in interstate bulk power transactions for a number of years. Although the Texas bulk power market has remained primarily intrastate in nature, there have been several changes since the NRC settlement in 1980 that have provided competitive stimuli to this market.

The change that has had the greatest impact in the Texas bulk power market has been the implementation of the joint settlement agreement, i.e., before the NRC and the Federal Energy Regulatory Commission. This settlement agreement required TU Electric, et al., to make their transmission facilities more available to power systems in Texas and thereby promote competition between intrastate and interstate power systems with the construction of two DC transmission lines. Although both of the direct current (DC) transmission ties with the Southwest Power Pool (SWPP) have not been completed, the North tie has been completed and the Central and South West operating systems are exchanging power and energy over this tie. Plans have been developed to expand the North tie (as contemplated in the settlement agreement) to accommodate a significant power transfer by a Texas co-generating entity.

Capacity (15 percent) in both DC interties has been reserved for non-owners who wish to engage in firm power transactions in the interstate market. Moreover, wheeling to, from or over the DC interties is now an available option to many power systems in Texas.

To remedy a growing need to redistribute power from co-generators concentrated in industrialized pockets in the state, the Texas Public Utility Commission promulgated rules requiring mandatory transmission or wheeling of co-generated power in Texas. These rules have enabled corporate entities, which heretofore have not participated in the Texas bulk power market, to market their by-product power and energy,

i.e., barriers to entry into the production and sale of bulk power in Texas have been lowered as a result of the newly adopted wheeling rules.

Increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the state of Texas. TU Electric has implemented numerous transmission and scheduling agreements which have enabled a variety of power systems to shop for alternative power throughout the northern portion of the state.* Moreover, a computer controlled bulletin board, advising all members of the Electric Reliability Council of Texas (ERCOT) of available power and energy in the state is now in place, making "shopping" for power and energy easier for more power systems in the state--thereby enabling power systems to better meet the individual needs of their customers.

*Although there have been allegations made recently by an electric cooperative power system in TU Electric's service area that TU Electric has not provided transmission and coordination services upon request, staff believes, in light of the Commission's Summer decision, that the issues raised by the cooperative are not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding.

All types of power entities in Texas, i.e., municipal, cooperative and investor owned, are beginning to explore joint generation projects both within and outside the state. The concept of interstate planning and participation in interstate power projects is a new one for most Texas power entities. Although the movement to interstate cooperation and competition is still in its embryonic stages in Texas, this movement was contemplated by and provided for in the antitrust settlement agreement before both the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission. (The settlement agreement provides for requests for capacity increases and ownership purchases in the DC interties at intervals of every 3 years beginning in June of 1986 and lasting until June of 2004.) It is anticipated that this movement toward increased cooperation and competition will continue among intrastate power systems within Texas and also between intrastate power systems wishing to engage in joint power supply planning and power supply transactions across state borders.

Although there are still physical impediments to complete synchronous operations between most Texas power entities and systems outside of Texas, i.e., there are no major alternating current interconnections between ERCOT and the SWPP, the settlement agreement provided power systems inside of Texas, as well as in surrounding states, the opportunity to exchange power and energy and engage in bulk power transactions.

The staff views the settlement agreement as a major first step in opening up power supply options to a broad spectrum of power entities in ERCOT and the SWPP. The staff's analysis of the changes in the licensees' activities since the antitrust settlement has not identified any changed activity envisioned by the Commission as set forth in its Summer decision. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 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 licensees' activities or proposed activities since the completion of the previous antitrust review.

Signed on June 16, 1989 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 information about 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, this 19th day of June 1989.

FOR THE NUCLEAR REGULATORY COMMISSION

Original signed by Darrel Nash for:

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[COMMANCHE PEAK LICENSE REVIEW]

*See Previous Concurrence]

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