

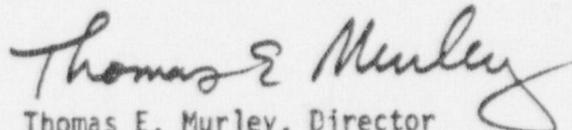
NUCLEAR REGULATORY COMMISSION
DOCKET NO. 50-445A
TEXAS UTILITIES ELECTRIC COMPANY
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 1
REEVALUATION OF ANTITRUST FINDING

Notice is hereby given that counsel for Cap Rock Electric Cooperative, Inc. has requested a reevaluation by the Director of the Office of Nuclear Reactor Regulation of the "Finding of No Significant Change" pursuant to the operating license antitrust review of the captioned nuclear unit. After further review, I have decided not to change my finding.

A copy of my finding, the request for reevaluation, and my reevaluation are available for public examination and copying, for a fee, at the Commission's Public Document Room, 2120 L Street, N.W., Washington, DC 20555.

Dated at Rockville, Maryland, this 29th day of August 1989.

FOR THE NUCLEAR REGULATORY COMMISSION



Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

REEVALUATION AND AFFIRMATION OF
NO SIGNIFICANT CHANGE FINDING PURSUANT TO
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 1
OPERATING LICENSE ANTITRUST REVIEW

By letter dated July 26, 1989, Mr. Robert A. O'Neil and Mr. John Michael Adragna, counsel representing Cap Rock Electric Cooperative, Inc. (Cap Rock), requested a reevaluation of my "Finding of No Significant Change" (Finding) pursuant to the captioned antitrust review which was published in the Federal Register on June 26, 1989 (54 Federal Register 26865). For the reasons set forth below, I have decided not to change my Comanche Peak Finding of no significant antitrust changes.

BACKGROUND

An antitrust review was conducted by the staffs of the Atomic Energy Commission and the Department of Justice pursuant to Texas Utilities Electric Company's (TU Electric or licensee)¹ application to construct the Comanche Peak Steam Electric Station (Comanche Peak). As a result of this review, a set of antitrust license conditions was attached to the Comanche Peak construction permits (Units 1 and 2). In connection with a parallel licensing proceeding (South Texas), the Commission found that "significant changes" in the licensee's

¹The initial applicant was Texas Utilities Generating Company. TU Electric is the descendant licensee resulting from corporate reorganizations.

activities had occurred since the construction permit review and on June 26, 1978 sought the advice of the Attorney General (as required by Section 105c of the Atomic Energy Act of 1954, as amended) as to whether or not an antitrust hearing should be held as a result of the changes. On August 1, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in the Comanche Peak proceeding. Several petitions to intervene were received and discovery took place in 1979 and 1980. On September 14, 1980, a settlement was reached and a revised set of antitrust license conditions was attached to the Comanche Peak construction permits. The revised set of license conditions added provisions requiring TU Electric to sell full and partial requirements bulk power to entities in the north Texas area and several other provisions that pertained to prohibitions against discrimination of services involving interstate power entities.

Due to the substantial lapse of time from the 1980 antitrust settlement in the Comanche Peak proceeding and the scheduled October 1989 fuel load for Unit 1 of Comanche Peak, the staff conducted a review of the Comanche Peak licensees' changed activities since the settlement agreement. The licensees provided information responsive to the Commission's Regulatory Guide 9.3 in September of 1986 and September of 1987. After reviewing the data submissions by the licensees, other pertinent public information as well as comments from interested parties, my staff concluded and made the determination (Staff Review) that the changes that were identified since the previous antitrust review were not "significant changes" as envisioned by the Commission in its Summer decision. As a result of this

review, I issued a "Finding of No Significant Change" on June 16, 1989. My Finding was published in the Federal Register on June 26, 1989 and provided for the filing of requests for reevaluation of my Finding within 30 days of the initial publication in the Federal Register. On July 26, 1989, counsel for Cap Rock Electric Cooperative, Inc., filed a request to reevaluate my Finding.

DISCUSSION

The Commission delegated its authority to make significant change findings to the staff and in its Summer decision, established a definite set of criteria the staff must follow in making the determination whether or not a significant change has occurred. The change or changes, ". . . 1) must have occurred since the previous antitrust review of the licensee(s); 2) are reasonably attributable to the licensee(s); and 3) have antitrust implications that would likely warrant some form of Commission remedy." [Commission Memorandum and Order, p. 7, dated June 30, 1980 (CLI-80-28)] It is within this framework established by the Commission that I made my initial "Finding of No Significant Change" on June 26, 1989 and it is within this framework that I have analyzed Cap Rock's request to reevaluate my Finding.

In its request for reevaluation (Request), Cap Rock asserts that my Finding is, 1) ". . . based upon a misinterpretation of the Summer decision . . ." and 2) is also based upon ". . . factual conclusions that are contradicted by substantial and un rebutted evidence." Neither of these assertions is correct. It is apparent

that Cap Rock has not distinguished between the Commission's licensing and enforcement responsibilities and the rationale governing the separation of these responsibilities.

The central premise of Cap Rock's request is that TU Electric has not complied with its license conditions and this alleged non-compliance represents a change in the licensee's activities since the previous antitrust review that could trigger an antitrust hearing at the operating license stage of the Commission's licensing process.

The overriding question is whether the willful abrogation of the Comanche Peak antitrust license conditions by Texas Utilities Electric Company ("TUEC") constitutes a significant change in TUEC's activities within the meaning of Section 105(c)(2) of the Atomic Energy Act" [Cap Rock Request, pp. 1-2]

Cap Rock contends that TU Electric's alleged non-compliance with its license conditions began in the mid-1980's and represents a change in the licensee's activities since the previous antitrust review which culminated in a settlement in the fall of 1980. Moreover, Cap Rock states that this changed activity is attributable solely to the licensee, has antitrust implications, i.e., this change negatively impacts competition, and warrants Commission remedy in the form of ". . . strict enforcement of the existing license conditions . . . , or amendment and enforcement of the license conditions to cure TUEC's anticompetitive conduct." Cap Rock argues that this alleged change in TU Electric's activities meets all three of the Summer criteria and that this activity represents a "significant change" as envisioned by Section 105c and should be considered in the context of the Commission's pre-licensing antitrust operating license review.

In its Summer decision, the Commission stated that Section 105c of the Atomic Energy Act requires a formal antitrust review only when significant changes have occurred since the previous review. In its discussion of whether or not the change or changes have occurred since the previous antitrust review of the licensee, the Commission indicated that "alleged changes" occurring subsequent to the previous antitrust review which were anticipated during the earlier review would not meet the criterion that the changes have occurred since the previous review of the licensee. The Commission stated in Summer that,

We believe that where some change was anticipated with approval at the previous stage the later actual occurrence of the change could constitute a significant change within the meaning of Section 105c(2) if the contours of the actual change were not anticipated and could not reasonably have been anticipated. (Emphasis added)
[Vigil C. Summer Nuclear Station Unit No. 1, 13 NRC 871 (1981)]

The licensee's changed activity, as outlined by Cap Rock in its Request, is activity that was or could have been anticipated by the Commission staff and the Department of Justice staff during the significant change review that culminated in the 1980 settlement agreement. If the "changed activities" in question were not of the type that were contemplated within the scope of the antitrust license conditions, then they could not be characterized as violations of these conditions. If in fact the alleged "changed activities" represented new anticompetitive acts or practices, then the existing license conditions would not control or govern these activities. New license conditions would have to be developed consistent with the requirements of the Atomic

Energy Act. The principal activities which Cap Rock alleges are changes since the previous antitrust review involve refusals by TU Electric to sell partial requirements wholesale power and energy, to transmit or wheel power and energy over TU Electric's transmission facilities, and to coordinate its planning and development of new facilities in a manner that would acknowledge the power supply needs of other entities in the north Texas area. Even though the parties now seeking reconsideration of my Finding were not identified during the previous antitrust review, all of these alleged changes are circumscribed by, and as envisioned in Summer, anticipated as possible problem areas that would be addressed by the license conditions formulated during the 1980 settlement agreement in connection with the previous antitrust review.

Contrary to Cap Rock's assertion, the staff is fully aware of the Commission's dual antitrust responsibilities of licensing and enforcement. Cap Rock asserts that the staff did not provide an explanation why the alleged changed activities did not fall within the scope of the Commission's Summer decision; however, the staff addressed this issue at length in its Staff Review.

Without ruling on the merits of Cap Rock's contentions, which are still under review, staff does not believe that the issues raised by Cap Rock represent changes that are within the scope of the Commission's Summer decision. The staff believes that TU Electric's activities, as alleged by Cap Rock, may represent recurrences of problems that were addressed and remedied during the antitrust construction permit review and subsequent operating license review by the Commission (via the institution

of antitrust license conditions attached to the Comanche Peak construction permits). (Emphasis added) [Staff Review, p. 31]

The staff recognized that the issues raised by Cap Rock were identical to the type of issues raised during the previous antitrust review which resulted in antitrust license conditions being attached to the Comanche Peak licenses. The types of alleged changed activity identified by Cap Rock represented the cornerstone of the review during the late 1970's. Staff noted this fact in its Staff Review at page 32.

As noted, it appears as though the issues raised in Cap Rock's Comments are not new issues or problem areas that can be attributed to TU Electric since the antitrust construction permit review in 1974 or the antitrust review by the Commission in the late 1970's. Staff believes that the issues raised by Cap Rock could possibly represent issues that may be more germane in the context of a compliance proceeding, i.e., pursuant to non-compliance with the antitrust license conditions that are attached to the Comanche Peak construction permit.

Moreover, in my Comanche Peak Finding, I considered and concurred in the conclusions of the Staff Review and determined that the issues Cap Rock raised during the operating license review were not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding. Congress did not intend for prospective nuclear plant licensees to undergo redundant antitrust reviews, one at the construction permit stage and one at the operating license stage, prior to attaining approval to operate a nuclear power plant. [C.f., Houston Lighting & Power Company, 5 NRC 1312, 1316-17 (1977)]

The review at the construction permit stage was intended to be an all encompassing de novo review and any subsequent antitrust operating license review was envisioned only if "significant changes" in the licensee's activities were identified by the Commission. The Commission, in its Summer decision, has interpreted Section 105c and laid down specific criterion for the staff to follow in its determination of what changes are "significant." I have made the determination that the changed activity described by Cap Rock in its Request is not "significant" and does not require that I change my original Finding. Since the Commission delegated the authority to make the "significant change" determination to the staff in 1979, the staff has consistently interpreted the Commission's Summer decision in the manner described herein.

Contrary to Cap Rock's second assertion that my Finding was based upon factual conclusions that are contradicted by substantial and unrebutted evidence, my Finding was based upon a thorough review and analysis of the facts available to the staff. The arguments raised by Cap Rock in its Request pursuant to TU Electric's changed activity have not denigrated my conclusion that there have been no significant antitrust changes in the licensee's activities since the previous antitrust review. Cap Rock cites as evidence of my factually incorrect conclusions that,

. . . The Director found that "increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the State of Texas" and that TUEC "has implemented numerous transmission and scheduling agreements which have enabled a variety of systems to shop for alternative power throughout the northern portion of the state". Yet

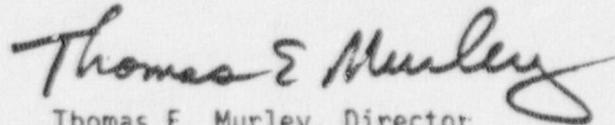
it is uncontroverted that TUEC has refused to provide these services to Cap Rock and has refused to acknowledge an obligation to provide these services to Cap Rock under the license conditions. [Cap Rock Request, pp. 5-6]

Cap Rock does not refute my finding that TU Electric has implemented numerous transmission and scheduling agreements with power systems in Texas. Nor does Cap Rock refute my finding that the effect of this activity has been to open up the bulk power supply market in northern Texas to a variety of power systems in the state. Cap Rock asserts that it too should be able to enjoy the fruits of this new competitive environment emerging in the state, but that the activity it describes as "significant changed" activity by TU Electric has prevented Cap Rock from doing so. Even if it were true that Cap Rock has not fully participated in all of the same coordination and power supply agreements as other entities in the north Texas area, it does not necessarily follow, as Cap Rock asserts, that "significant changes" have occurred. Cap Rock also states that evidence of this activity has been provided to the Commission and has gone "unrebutted." However, even though TU Electric has responded to Cap Rock's filings during both the operating license antitrust review and the outstanding Section 2.206 compliance proceeding, it is the staff's position that both Cap Rock's allegations and TU Electric's rebuttals will be fully considered in the on-going compliance proceeding -- not in the context of the Commission's antitrust operating license review.

As I indicated in my Finding, the issues raised by Cap Rock during the antitrust operating license review and the issues raised in the most recent Request, are issues that are not germane, i.e., they do not have a significant connection, to the antitrust operating license review process. The issues which have been raised by Cap Rock do have relevance in the context of the Commission's antitrust review responsibilities; however, as I indicated in my Finding, the proper forum for their resolution is that of an antitrust compliance proceeding. Cap Rock seems to concur with this conclusion at page 4 of its Request: "Cap Rock readily agrees that TUEC's actions are appropriately the subject of a petition to the Director to enforce the existing antitrust license conditions." [This is evidenced by Cap Rock's filing dated May 12, 1989 requesting enforcement action.] Moreover, Cap Rock states at pages 9 and 10 of its Request that, "The activities [of TU Electric] are clearly significant, as they are precisely the kind of activities that the Commission sought to remedy through the license conditions. . . ." To this end, an antitrust compliance investigation has been instituted and the staff is in the process of reviewing all of the relevant data which have been submitted. I expect the compliance process to resolve the issues raised by Cap Rock.

Cap Rock requested that I reverse my Finding that no significant changes have occurred in the licensee's activities subsequent to the antitrust review associated with the construction permit for Unit 1 of the Comanche Peak Steam

Electric Station. For the reasons stated above, I have decided not to change my "Finding of No Significant Change" pursuant to the antitrust operating license review of the Comanche Peak Steam Electric Station, Unit 1.

A handwritten signature in cursive script that reads "Thomas E. Murley". The signature is written in dark ink and is positioned above the printed name and title.

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

August 31, 1989

Docket No. 50-445A

William J. Cahill, Jr.
Executive Vice President, Nuclear
Texas Utilities Electric Company
400 North Olive Street, L.B. 81
Dallas, Texas 75201

Re: Comanche Peak Steam Electric Station, Unit 1: Antitrust Operating
License Review--Reevaluation of No Significant Change Finding

Dear Mr. Cahill:

On July 26, 1989, Cap Rock Electric Cooperative, Inc. requested the Director of the Office of Nuclear Reactor Regulation to reevaluate his finding in the captioned proceeding. The Director has reevaluated his finding and has decided not to change his "Finding of No Significant Change."

A copy of the notice that is being transmitted to the Federal Register and a copy of the Director's reevaluation finding are enclosed for your information.

Sincerely,

Original Signed by:

William M. Lambe
Sr. Antitrust Policy Analyst
Policy Development and Technical
Support Branch
Program Management, Policy Development
and Analysis Staff
Office of Nuclear Reactor Regulation

Enclosures:
As stated

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[CAP ROCK]

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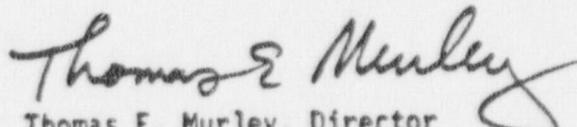
NUCLEAR REGULATORY COMMISSION
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Dated at Rockville, Maryland, this 29th day of August 1989.

FOR THE NUCLEAR REGULATORY COMMISSION



Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

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REEVALUATION AND AFFIRMATION OF
NO SIGNIFICANT CHANGE FINDING PURSUANT TO
COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 1
OPERATING LICENSE ANTITRUST REVIEW

By letter dated July 26, 1999, Mr. Robert A. O'Neil and Mr. John Michael Adragna, counsel representing Cap Rock Electric Cooperative, Inc. (Cap Rock), requested a reevaluation of my "Finding of No Significant Change" (Finding) pursuant to the captioned antitrust review which was published in the Federal Register on June 26, 1989 (54 Federal Register 26865). For the reasons set forth below, I have decided not to change my Comanche Peak Finding of no significant antitrust changes.

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review, I issued a "Finding of No Significant Change" on June 16, 1989. My Finding was published in the Federal Register on June 26, 1989 and provided for the filing of requests for reevaluation of my Finding within 30 days of the initial publication in the Federal Register. On July 26, 1989, counsel for Cap Rock Electric Cooperative, Inc., filed a request to reevaluate my Finding.

DISCUSSION

The Commission delegated its authority to make significant change findings to the staff and in its Summer decision, established a definite set of criteria the staff must follow in making the determination whether or not a significant change has occurred. The change or changes, ". . . 1) must have occurred since the previous antitrust review of the licensee(s); 2) are reasonably attributable to the licensee(s); and 3) have antitrust implications that would likely warrant some form of Commission remedy." [Commission Memorandum and Order, p. 7, dated June 30, 1980 (CLI-80-28)] It is within this framework established by the Commission that I made my initial "Finding of No Significant Change" on June 26, 1989 and it is within this framework that I have analyzed Cap Rock's request to reevaluate my Finding.

In its request for reevaluation (Request), Cap Rock asserts that my Finding is, 1) ". . . based upon a misinterpretation of the Summer decision . . ." and 2) is also based upon ". . . factual conclusions that are contradicted by substantial and unrebutted evidence." Neither of these assertions is correct. It is apparent

that Cap Rock has not distinguished between the Commission's licensing and enforcement responsibilities and the rationale governing the separation of these responsibilities.

The central premise of Cap Rock's request is that TU Electric has not complied with its license conditions and this alleged non-compliance represents a change in the licensee's activities since the previous antitrust review that could trigger an antitrust hearing at the operating license stage of the Commission's licensing process.

The overriding question is whether the willful abrogation of the Comanche Peak antitrust license conditions by Texas Utilities Electric Company ("TUEC") constitutes a significant change in TUEC's activities within the meaning of Section 105(c)(2) of the Atomic Energy Act " [Cap Rock Request, pp. 1-2]

Cap Rock contends that TU Electric's alleged non-compliance with its license conditions began in the mid-1980's and represents a change in the licensee's activities since the previous antitrust review which culminated in a settlement in the fall of 1980. Moreover, Cap Rock states that this changed activity is attributable solely to the licensee, has antitrust implications, i.e., this change negatively impacts competition, and warrants Commission remedy in the form of ". . . strict enforcement of the existing license conditions . . . , or amendment and enforcement of the license conditions to cure TUEC's anticompetitive conduct." Cap Rock argues that this alleged change in TU Electric's activities meets all three of the Summer criteria and that this activity represents a "significant change" as envisioned by Section 105c and should be considered in the context of the Commission's pre-licensing antitrust operating license review.

In its Summer decision, the Commission stated that Section 105c of the Atomic Energy Act requires a formal antitrust review only when significant changes have occurred since the previous review. In its discussion of whether or not the change or changes have occurred since the previous antitrust review of the licensee, the Commission indicated that "alleged changes" occurring subsequent to the previous antitrust review which were anticipated during the earlier review would not meet the criterion that the changes have occurred since the previous review of the licensee. The Commission stated in Summer that,

I believe that where some change was anticipated with approval at the previous stage the later actual occurrence of the change could constitute a significant change within the meaning of Section 105c(2) if the contours of the actual change were not anticipated and could not reasonably have been anticipated. (Emphasis added)
[Vigil C. Summer Nuclear Station Unit No. 1,
13 NRC 871 (1981)]

The licensee's changed activity, as outlined by Cap Rock in its Request, is activity that was or could have been anticipated by the Commission staff and the Department of Justice staff during the significant change review that culminated in the 1980 settlement agreement. If the "changed activities" in question were not of the type that were contemplated within the scope of the antitrust license conditions, then they could not be characterized as violations of these conditions. If in fact the alleged "changed activities" represented new anticompetitive acts or practices, then the existing license conditions would not control or govern these activities. New license conditions would have to be developed consistent with the requirements of the Atomic

Energy Act. The principal activities which Cap Rock alleges are changes since the previous antitrust review involve refusals by TU Electric to sell partial requirements wholesale power and energy, to transmit or wheel power and energy over TU Electric's transmission facilities, and to coordinate its planning and development of new facilities in a manner that would acknowledge the power supply needs of other entities in the north Texas area. Even though the parties now seeking reconsideration of my Finding were not identified during the previous antitrust review, all of these alleged changes are circumscribed by, and as envisioned in Summer, anticipated as possible problem areas that would be addressed by the license conditions formulated during the 1980 settlement agreement in connection with the previous antitrust review.

Contrary to Cap Rock's assertion, the staff is fully aware of the Commission's dual antitrust responsibilities of licensing and enforcement. Cap Rock asserts that the staff did not provide an explanation why the alleged changed activities did not fall within the scope of the Commission's Summer decision; however, the staff addressed this issue at length in its Staff Review.

Without ruling on the merits of Cap Rock's contentions, which are still under review, staff does not believe that the issues raised by Cap Rock represent changes that are within the scope of the Commission's Summer decision. The staff believes that TU Electric's activities, as alleged by Cap Rock, may represent recurrences of problems that were addressed and remedied during the antitrust construction permit review and subsequent operating license review by the Commission (via the institution

of antitrust license conditions attached to the Comanche Peak construction permits). (Emphasis added) [Staff Review, p. 31]

The staff recognized that the issues raised by Cap Rock were identical to the type of issues raised during the previous antitrust review which resulted in antitrust license conditions being attached to the Comanche Peak licenses. The types of alleged changed activity identified by Cap Rock represented the cornerstone of the review during the late 1970's. Staff noted this fact in its Staff Review at page 32.

As noted, it appears as though the issues raised in Cap Rock's Comments are not new issues or problem areas that can be attributed to TU Electric since the antitrust construction permit review in 1974 or the antitrust review by the Commission in the late 1970's. Staff believes that the issues raised by Cap Rock could possibly represent issues that may be more germane in the context of a compliance proceeding, i.e., pursuant to non-compliance with the antitrust license conditions that are attached to the Comanche Peak construction permit.

Moreover, in my Comanche Peak Finding, I considered and concurred in the conclusions of the Staff Review and determined that the issues Cap Rock raised during the operating license review were not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding. Congress did not intend for prospective nuclear plant licensees to undergo redundant antitrust reviews, one at the construction permit stage and one at the operating license stage, prior to attaining approval to operate a nuclear power plant. [C.f., Houston Lighting & Power Company, 5 NRC 1312, 1316-17 (1977)]

The review at the construction permit stage was intended to be an all encompassing de novo review and any subsequent antitrust operating license review was envisioned only if "significant changes" in the licensee's activities were identified by the Commission. The Commission, in its Summer decision, has interpreted Section 105c and laid down specific criterion for the staff to follow in its determination of what changes are "significant." I have made the determination that the changed activity described by Cap Rock in its Request is not "significant" and does not require that I change my original Finding. Since the Commission delegated the authority to make the "significant change" determination to the staff in 1979, the staff has consistently interpreted the Commission's Summer decision in the manner described herein.

Contrary to Cap Rock's second assertion that my Finding was based upon factual conclusions that are contradicted by substantial and unrebutted evidence, my Finding was based upon a thorough review and analysis of the facts available to the staff. The arguments raised by Cap Rock in its Request pursuant to TU Electric's changed activity have not denigrated my conclusion that there have been no significant antitrust changes in the licensee's activities since the previous antitrust review. Cap Rock cites as evidence of my factually incorrect conclusions that,

. . . The Director found that "increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the State of Texas" and that TUEC "has implemented numerous transmission and scheduling agreements which have enabled a variety of systems to shop for alternative power throughout the northern portion of the state". Yet

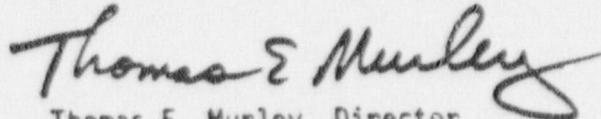
it is uncontroverted that TUEC has refused to provide these services to Cap Rock and has refused to acknowledge an obligation to provide these services to Cap Rock under the license conditions. [Cap Rock Request, pp. 5-6]

Cap Rock does not refute my finding that TU Electric has implemented numerous transmission and scheduling agreements with power systems in Texas. Nor does Cap Rock refute my finding that the effect of this activity has been to open up the bulk power supply market in northern Texas to a variety of power systems in the state. Cap Rock asserts that it too should be able to enjoy the fruits of this new competitive environment emerging in the state, but that the activity it describes as "significant changed" activity by TU Electric has prevented Cap Rock from doing so. Even if it were true that Cap Rock has not fully participated in all of the same coordination and power supply agreements as other entities in the north Texas area, it does not necessarily follow, as Cap Rock asserts, that "significant changes" have occurred. Cap Rock also states that evidence of this activity has been provided to the Commission and has gone "unrebutted." However, even though TU Electric has responded to Cap Rock's filings during both the operating license antitrust review and the outstanding Section 2.206 compliance proceeding, it is the staff's position that both Cap Rock's allegations and TU Electric's rebuttals will be fully considered in the on-going compliance proceeding -- not in the context of the Commission's antitrust operating license review.

As I indicated in my Finding, the issues raised by Cap Rock during the antitrust operating license review and the issues raised in the most recent Request, are issues that are not germane, i.e., they do not have a significant connection, to the antitrust operating license review process. The issues which have been raised by Cap Rock do have relevance in the context of the Commission's antitrust review responsibilities; however, as I indicated in my Finding, the proper forum for their resolution is that of an antitrust compliance proceeding. Cap Rock seems to concur with this conclusion at page 4 of its Request: "Cap Rock readily agrees that TUEC's actions are appropriately the subject of a petition to the Director to enforce the existing antitrust license conditions." [This is evidenced by Cap Rock's filing dated May 12, 1989 requesting enforcement action.] Moreover, Cap Rock states at pages 9 and 10 of its Request that, "The activities [of TU Electric] are clearly significant, as they are precisely the kind of activities that the Commission sought to remedy through the license conditions. . . ." To this end, an antitrust compliance investigation has been instituted and the staff is in the process of reviewing all of the relevant data which have been submitted. I expect the compliance process to resolve the issues raised by Cap Rock.

Cap Rock requested that I reverse my Finding that no significant changes have occurred in the licensee's activities subsequent to the antitrust review associated with the construction permit for Unit 1 of the Comanche Peak Steam

Electric Station. For the reasons stated above, I have decided not to change my "Finding of No Significant Change" pursuant to the antitrust operating license review of the Comanche Peak Steam Electric Station, Unit 1.

A handwritten signature in cursive script that reads "Thomas E. Murley". The signature is written in dark ink and is positioned above the printed name and title.

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation