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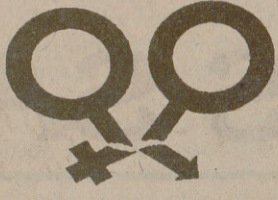
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Court agrees to reconsider reversed ruling

HOUSTON (AP) — At the request of Harris County prosecutors, the Texas Court of Criminal Appeals has agreed to reconsider its reversal of a death sentence for a man convicted in the 1979 murder for hire of an infant.

The Austin-based appellate court in January overturned the capital murder conviction of Allen Wayne Janecka, ruling that there was an error in his indictment.

Janecka was convicted in 1981 of murdering 14-month-old Kevin Wanstrath, and according to testimony also killed the child's parents.

Defense attorneys had argued that the exclusion in the indictment of the name of the person who financed the slayings hampered the defense.

The appellate court ruled in 1987 that the error did not hamper Janecka's defense, but one year later it offered the defense a chance to prove its harm. After a hearing was held, the court agreed that the defense was hampered.

Defense attorney Ken Sparks said if the court affirms its position, Janecka's case probably will be retried. If not, his client will remain on death row.

Groups claim utilities company overcharged for nuclear plant

AUSTIN (AP) — Texas Utilities Electric Co. has overcharged its customers — one-third of all Texans — by at least \$1 billion to pay for the Comanche Peak nuclear plant, representatives of a coalition of citizen groups and electric cooperatives charged Thursday.

The groups likened the nuclear plant, which is 10 years behind schedule and more than \$8 billion over its original cost, to an "electric Edsel" and a "nuclear dinosaur."

The plant is located in Glen Rose, 45 miles southwest of Fort Worth.

"TU Electric has collected hundreds of millions of dollars under false pretenses to help pay for a horrendously expensive, uneconomical generating plant," said Steve Collier, director of power supply for Cap Rock Electric Cooperative in Stanton.

"We are saying not one more penny for Comanche Peak," said Shelley Stults, program assistant for the citizens' organization Texans United.

David Fiorelli, senior engineer with TU, denied that the company has overcharged.

"Cap Rock has simply manipulated numbers, and the results that they have produced are meaningless," he said.

Representatives of the consumer groups said TU wrongfully has charged its customers more than \$1 billion for construction of the plant since 1986. The charges were approved by the Texas Public Utility Commission in 1984, when the plant's completion was scheduled for 1986.

"This amounts to an inappropriate, if not illegal, form of passing onto the ratepayer construction work in progress costs," said Lon Burnham, Fort Worth director of the consumer group Texas Citizen Action. "If the PUC functioned as it should, this \$1 billion overcharge would have been challenged in 1986."

Fiorelli said the company has fulfilled its pledge not to recover investment costs for Comanche Peak until the plant is in operation.

He said the \$270 million the company has paid along each year in interest costs associated with building the plant is appropriate and was approved by the PUC. TU will defend that practice during the rate hearing this summer, he said.

"The actual cost of building the plant will not be allowed to recover until it goes in service," Fiorelli said.

The consumer groups based their charges on a study of TU's electric rates commissioned by Cap Rock Electric, which is a party in TU's rate case that will be heard by the PUC this summer.

The Oklahoma consulting firm C.H. Guernsey Inc. concluded that in 1989, TU made nearly \$350 million profit in excess of what the PUC determined to be in 1984.

Fiorelli said electric rates actually have dropped a kilowatt hour by 10 percent since 1984, while the rate per hour have risen 15.5 percent.

"While revenues have gone up, expenses have gone up," he said. "The bottom line is, profit is less."

The groups said they will use the results to fight a quest for a 10 percent rate hike already filed by TU, and another 10 percent increase in 1992.

The two increases are scheduled in conjunction with the start up of the nuclear plant's two reactors, one in summer and the other in 1992, Fiorelli said.

He said the company has deteriorated financial since 1984, partly because of Comanche Peak's overruns.

Nevertheless, he said the company is confident a nuclear plant will prove worth the trouble at some point during the 40 years it is licensed to operate because offers a chance to diversify fuel sources.

"We're confident that some time in the future the advantages of a low-cost nuclear fuel will make Comanche Peak an attractive source of energy for us," he said.

Dallas police lost evidence during shuffle

Officials ask Clements for pardon

DALLAS (AP) — A statement clearing a man who has been in prison 10 years for a robbery he apparently didn't commit was lost when Dallas police transferred the case to a suburb, trial officials say.

The district attorney, sheriff and state district judge who handled the case are asking Gov. Bill Clements to pardon Stephen Lynn Russell for a 1979 restaurant robbery to which another man, Robert Wilkey, confessed in 1985.

Russell is serving a 50-year sentence at a state prison in Rosharon for the holdup.

Mary Newton, one of two women in the getaway car from the robbery, told police the day after that Russell wasn't there and Wilkey was the robber.

However, Newton's statement was not passed along to Garland police when Dallas investigators transferred the case, according to a letter from District Attorney John Vance, Sheriff Jim Bowles and State District Judge Mark Tolle to the State Board of Pardons and Paroles in Austin, seeking a pardon for Russell.

The man who took the statement clearing Russell insisted he told Garland police everything he knew about the case, including the fact that Wilkey was the prime suspect, the Dallas Morning

News reported Thursday.

"I didn't lose the information," said Sgt. Harold Rice, now a Dallas County bailiff. "It didn't get lost in the shuffle. I gave it to Garland (police). What they did with it, I don't know."

The Garland detective who built the case against Russell could not be reached for comment. Officials said he left the department in 1984.

Prison authorities refused to allow reporters to talk to Russell by telephone, but his attorney said he was very happy about the pardon request and credited Vance for pursuing it.

According to court records, the restaurant was robbed by a tall, brown-haired man who pointed a gun at restaurant manager Chris Reeves and ordered him to empty the cash register. The robber fled with about \$400.

Acting on a tip, police arrested Wilkey, Newton and a third person the next day.

Newton told Sgt. Rice that Wilkey robbed the restaurant, but Wilkey implicated an acquaintance who bore a striking resemblance to him — Russell, a tall man with blond hair.

The case was immediately transferred when police discovered the restaurant was in Garland.

Russell was arrested three months later when he surrendered on a warrant for a prior offense.

Restaurant employees picked Russell's picture out of photo lineups.

The restaurant manager, who now lives in North Carolina, told the Dallas Morning News three months ago that Garland police pressed him into identifying Russell in a lineup.

Russell's sentence was particularly stiff because he had two prior convictions.

The two women who could have cleared Russell were unavailable to testify at his trial. One of them said recently she did not come forward because she feared she would be prosecuted.

"If a man would not have been prosecuted, a jury would not have convicted him had all the facts been known, he should not have the conviction attached to his record," Vance said Wednesday, when the pardon request was sent.

This is the fourth pardon request Vance has submitted in four months. The Dallas County district attorney's office in the past five years has dismissed charges against three other people — Lenell Geter, Randall Dale Adams and Ann Brown — who were wrongly convicted.

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