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SUBJECT: Responds to NRC 940314 notice in FR seeking public "comments or information re antitrust issues believed to be raised," by proposed transfer of control of ownership of EPEC's interest in PVNGS Units 1-3.

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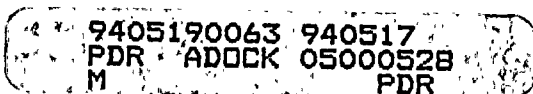
Anthony T. Gody, Sr.
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Re: Arizona Public Service Company; El Paso Electric
Company; Consideration of Transfer of Control of
Ownership of License and Opportunity for Public Comment
on Antitrust Issues
Docket Nos. STN 50-528, 50-529, 50-530

Dear Sir:

This letter is written on behalf of El Paso Electric Company (EPEC) and Central and South West Services, Inc. (CSWS), acting on behalf of Central and South West Corporation (CSW) and its four electric utility operating subsidiaries, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma (PSO), and Southwestern Electric Power Company (SWEPCO). CPL, WTU, PSO and SWEPCO are hereinafter referred to as the CSW Operating Companies.

On March 14, 1994, the Nuclear Regulatory Commission (NRC or Commission) published a Notice in the Federal Register seeking public "comments or information relating to antitrust issues believed to be raised" by the proposed transfer of control of ownership of EPEC's interests in Palo Verde Nuclear Generating Station (PVNGS) Unit Nos. 1, 2 and 3 for which EPEC and Arizona Public Service Company (APS), as Operating Agent of PVNGS, have sought NRC consent. Southwestern Public Service Company



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(Southwestern) and the City of Las Cruces, New Mexico (Las Cruces), and Plains Electric Generation and Transmission Cooperative, Inc. (Plains) (collectively, Commenting Parties) filed comments in response to that Notice. Each of them asserted that the transaction between EPEC and CSW that will result in the indirect transfer of ownership in EPEC's PVNGS interests (the Transaction) would have anticompetitive effects. In addition, Plains responded to the March 14th Notice requesting comments by also seeking leave to intervene and requesting an antitrust hearing. By Order dated April 14, 1994, the Assistant Secretary of the Commission, acting pursuant to 10 C.F.R. § 2.772, referred Plains' petition to the Director of Nuclear Reactor Regulation for consideration as a comment on the proposed transfer of control in accordance with the March 14th Notice.

The Commenting Parties' assertions are based upon an inaccurate account of the relevant facts. Moreover, the Commenting Parties' call for the institution of formal proceedings to investigate their assertions reflects a basic misunderstanding of the relevant statutes, regulations, and NRC decisions governing the NRC's review of antitrust matters arising in post-operating license transfer of control cases. Most important, the assertions of Southwestern, Las Cruces and Plains regarding the effects of the Transaction on competition merely repeat arguments those parties have made before other federal agencies that have the authority and a duty to consider the competitive implications of an electric utility merger.

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Southwestern, Las Cruces and Plains have made voluminous filings with the Federal Energy Regulatory Commission (FERC) that state in great detail the same competition claims they made in their comments to the NRC Staff. Las Cruces and Southwestern have also repeated their competition arguments before the Securities and Exchange Commission, which also has jurisdiction to review the Transaction.¹

The NRC has consistently relied upon the competition analyses conducted by the FERC to satisfy the NRC's responsibility to determine whether a change in ownership resulting from a utility merger would cause a significant change warranting a full-blown antitrust inquiry. See, e.g., Gulf States Utilities Company, (River Bend Station), Notice of No Significant Antitrust Changes, 58 Fed. Reg. 54175 (Oct. 20, 1993); Northeast Nuclear Energy Co., (Millstone Nuclear Power Station, Unit 3), Proposed Ownership Transfer, No Significant Antitrust Changes, 57 Fed. Reg. 6048 (Feb. 19, 1992).² The FERC

¹ The United States Department of Justice and the Federal Trade Commission will have an opportunity to review the Transaction pursuant to the Hart-Scott-Rodino Antitrust Improvements Act later this year. In addition, the Transaction is being reviewed by the Public Utility Commission of Texas and the New Mexico Public Utility Commission to determine whether the Transaction is consistent with the public interest.

² The appropriateness of the NRC's "watchful deference" to the FERC's findings is supported by the legislative history of the 1970 Amendments to the Atomic Energy Act of 1954. During the floor debate on those amendments, Senator Hart, then chairman of the Senate Subcommittee on Antitrust and Monopoly, stated:

(continued...)

is expected to issue its initial order relating to the Transaction in late May or mid-June 1994.³ If the FERC continues to employ the process it has used in recent merger cases, the FERC will state in its initial order its assessment of the competitive implications of the Transaction and indicate what, if any, conditions may be required to ameliorate the effects of the Transaction on competition, if any adverse effects are found.⁴ Given the reasonable likelihood that the FERC will

²(...continued)

The Atomic Energy Act is only a supplement to the existing antitrust laws, and this will not be changed by the passage of [the 1970 Amendments]. No primary jurisdiction is vested in the AEC, and all forms of antitrust relief remain open for all parties at any time, whether or not the Commission may be considering similar or identical facts and issues in a licensing proceeding involving similar parties.

116 Cong. Rec. 39622 (December 2, 1970).

³ This estimate is based upon the time that the FERC has taken in previous similar merger application cases in issuing its initial order. E.g., Entergy Services, Inc. and Gulf States Utilities Company, 62 FERC ¶ 61,073, reh'g, 64 FERC ¶ 61,001 (1993).

⁴ In recent cases, the FERC has ordered applicants for a merger approval order to provide transmission service under so-called "open access" transmission service tariffs, or, if such tariffs were already in place, found them to be acceptable for this purpose or otherwise ordered them to be modified to make them acceptable. On September 9, 1993, the CSW Operating Companies that are interconnected with Southwestern filed "open access" transmission service tariffs under which Southwestern has access through those CSW Operating Companies to most Southwest Power Pool utility systems as well as to qualifying facility and other independent power projects now located in the Southwest Power Pool or that will be in the future. Those tariffs were accepted for filing subject to minor modification by FERC order
(continued...)

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rule soon on the competitive arguments asserted by Southwestern, Las Cruces and Plains, consistent with the NRC Staff's March 14th Federal Register notice, 59 Fed. Reg. 11813, the NRC Staff should await the FERC's assessment of those claims before taking further action. Thereafter, the NRC and its staff should give the same deference to the FERC's findings as in other recent cases.

I. THE TRANSACTION

As explained in the Joint Application filed by APS and EPEC on January 13, 1994, the proposed change of control of EPEC's interests in PVNGS will result from the merger of a shell subsidiary of CSW into EPEC. This Transaction is the basis upon which EPEC plans to emerge from bankruptcy under the Third Plan of Reorganization that has been confirmed by the U.S. Bankruptcy Court.

The change in control over EPEC's PVNGS licenses and assets that the Transaction will effect will be indirect. EPEC will survive the Transaction and EPEC will continue in business as a regulated electric utility company operating in Texas and New Mexico. After the Transaction is completed, EPEC will continue to hold all of its title to and interests in EPEC's PVNGS assets

⁴(...continued)
issued November 8, 1993 in Southwestern Electric Power Company and Public Service Company of Oklahoma, 65 FERC ¶ 61,212 (1993). With their FERC application, EPEC and CSWS stated that EPEC would offer similar "open access" transmission services over its core transmission system, which is operated in the Western Systems Coordinating Council (WSCC), and filed with the FERC "pro forma" transmission service tariffs under which such services would be provided.

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and operating licenses, as well as EPEC's other utility assets. Likewise, APS will continue to be the Operating Agent of the PVNGS units.

The Transaction will be pro-competitive. After the Transaction is consummated, EPEC will offer "open access" transmission service over its core transmission facilities, including particularly EPEC's ownership interests in the Eddy County tie, described below, by which EPEC's transmission system is interconnected with Southwestern's transmission system and, thereby, with the Southwest Power Pool (SPP).⁵ Such services will be offered under tariffs of general availability that contain rates and terms that will be regulated by the FERC.⁶

As Southwestern notes in its comments, the transmission systems of EPEC and of the CSW Operating Companies (Applicants) are not adjacent or directly connected. As Southwestern also correctly states, EPEC does not presently buy firm capacity from, or sell firm capacity to, any of the CSW Operating Companies. Southwestern Comments at 19. Indeed, EPEC operates in the

⁵ EPEC and CSWS filed drafts of these "open access" tariffs with the FERC as part of their application for approval by the FERC of the Transaction under section 203 of the Federal Power Act. EPEC's proposed tariffs are generally modeled after similar "open access" tariffs that PSO and SWEPCO filed with the FERC in 1993. See note 4, supra.

⁶ The specific conditions to the Commission's consent to the proposed indirect transfer of control Southwestern seeks all relate to the use of the transmission systems of EPEC and the CSW Operating Companies. These matters are obviously more appropriately dealt with by the FERC. Indeed, Southwestern has asked the FERC to attach such conditions to its approval of the transaction.

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Western Systems Coordinating Council (WSCC), a regional reliability council which covers the western one-third of the United States, while the CSW Operating Companies operate either in the SPP or the Electric Reliability Council of Texas (ERCOT), separate regional reliability councils that are not operated in synchronism with each other or with the WSCC.

Southwestern's transmission system is located at the western end of the SPP and forms the bridge between the SPP and the WSCC. Within the SPP, Southwestern's principal interconnections are with PSO. The WSCC is connected to Southwestern's system by means of two high voltage direct current (HVDC) interconnections.⁷ One of these is the 220 MW Blackwater Tie that connects Southwestern's transmission system with the transmission system of Public Service Company of New Mexico (PNM). Beginning in 1995, Southwestern will use the Blackwater tie to effect a 200 MW capacity sale to PNM.

The other tie between the WSCC and Southwestern's transmission system is the 200 MW Eddy County tie, located near

⁷ These DC ties make possible the transfer of power between the SPP and the WSCC, which otherwise operate at different electrical voltage angles, or "asynchronously." The SPP and ERCOT are similarly joined by a 220 MW HVDC interconnection near the Oklaunion generating station and will be further interconnected by a 600 MW HVDC interconnection now being constructed in east Texas between the Monticello generating station of Texas Utilities Electric Company and the Welsh generating station of SWEPCO, which will be owned jointly by CSW, Texas Utilities Electric Company, and Houston Lighting & Power Company. The SPP and ERCOT are also operated asynchronously and these HVDC ties serve the same purpose as those between Southwestern and the WSCC of enabling the transfer of power between asynchronous control areas.

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Artesia, New Mexico, which connects Southwestern's system with the transmission systems of Texas New Mexico Power Company (TNP) and EPEC. TNP owns one-third (66 MW) of the transfer capability of the Eddy County tie, and EPEC owns the remaining two thirds.

Southwestern uses TNP's share of the Eddy County tie capacity to effect a 66 MW capacity sale to TNP. EPEC now uses its 133 MW share of the Eddy County tie to purchase a minimum of 50 MW of firm capacity from Southwestern.⁸ EPEC makes use of its remaining Eddy County tie capacity principally to make economy energy purchases from Southwestern. Although EPEC's purchase of firm capacity from Southwestern is now expected to terminate in 1996, EPEC's long range "stand alone" resource plan⁹ contemplates that EPEC would make a 50 MW firm capacity purchase from Southwestern in the years 2000-2004, using the Eddy County tie to import that power from Southwestern's system.

By joining the CSW System, however, EPEC forecasts that it can cut its production costs by purchasing capacity from the CSW Operating Companies at lower cost and in amounts that are more precisely tailored to its changing needs¹⁰ and by participating

⁸ In 1996, the minimum amount that EPEC purchases from Southwestern will increase to 75 MW. Also, EPEC can increase the firm purchase from Southwestern in any period up to a total of 150 MW pursuant to the terms of the contract governing the purchase.

⁹ This is the capacity plan that EPEC would follow if it were not acquired by CSW and remained a "stand alone" utility.

¹⁰ Specifically, EPEC and CSW have forecast that, in the 10 years ending December 31, 2004, EPEC and the CSW Operating
(continued...)

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in the central economic dispatch of the CSW System.¹¹ To this end, on May 10, 1993 EPEC and CSW asked Southwestern to provide firm and non-firm transmission service between the EPEC and PSO control areas sufficient to enable transfers in amounts up to 133 MW, the amount of Eddy County tie capacity that is owned by EPEC. Southwestern has refused to provide the requested transmission services and has further claimed that, notwithstanding FERC's recently expanded power to order transmission service to be involuntarily provided¹², the FERC has no authority to compel Southwestern to accede to the request for service EPEC and CSW have made.¹³ Consequently, on November 4, 1993, EPEC and CSW

¹⁰(...continued)

Companies could share in \$22.6 million in capacity-related savings, principally as the result of EPEC's replacing a 50 MW firm capacity purchase from Southwestern in the years 2000-2004 with a less costly program of purchasing capacity from the CSW Operating Companies.

¹¹ The economic dispatch of the combined generating units of the CSW Operating Companies and EPEC are expected to produce \$37.9 million of fuel-related savings in the first 10 years of post-merger operations. The majority of such savings will result from EPEC's generation of additional energy in off-peak and shoulder hours that will be transferred from west to east across the Eddy County tie to displace more expensive energy that would otherwise be generated by the CSW Operating Companies.

¹² See Section 211 of the Federal Power Act, 16 U.S.C. § 824j.

¹³ See generally Application of El Paso Electric Company and Central and SouthWest Service, Inc. for the issuance of an Order pursuant to Section 211 and 212 of the Federal Power Act, As Amended, Docket No. TX94-2-000 (filed Nov. 4, 1983).

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filed an application with the FERC requesting the FERC to order Southwestern to provide the requested transmission services.¹⁴

One reason for Southwestern's refusal to provide the requested transmission services appears to be its desire to block out the use of 80 MW of EPEC's Eddy County tie capacity in order to use that transfer capability to displace EPEC as the power supplier to end users in Las Cruces.¹⁵ Las Cruces supports Southwestern's efforts in this regard apparently because it sees Southwestern as a potential supplier to the municipal electric system the city government has under active consideration.¹⁶

¹⁴ The application is pending initial action by the FERC in FERC Docket No. TX94-3-000.

¹⁵ EPEC holds a certificate of convenience and necessity under the New Mexico Public Utility Act which obligates EPEC to provide electric service to retail end use customers located in Las Cruces. In response to a request for proposals (RFP) issued by the City of Las Cruces on February 28, 1994, Southwestern has proposed, separately, to provide the full requirements power supply to a yet to be established operating municipal electric utility in Las Cruces and to operate such municipal electric utility system on a contract basis (but only if it is given the power supply contract).

¹⁶ Las Cruces has also given serious consideration to proposals by Destec Energy, Inc., a developer of "independent power projects" to supply the electricity requirements of a Las Cruces municipal utility from an "IPP" located in New Mexico. Deliveries from either of the proposed Destec projects would not require use of the Eddy County tie. "Las Cruces Seeks Vote On Municipalization," The Energy Daily, April 26, 1994 at 4. See generally "Power Plays," The Wall Street Journal, May 9, 1994 at 1.

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II. THE ANTITRUST CONTENTIONS ARE INHERENTLY IMPLAUSIBLE

As explained more fully below, the antitrust contentions of Plains, Southwestern and Las Cruces reflect a serious misunderstanding concerning the scope of the Commission's antitrust review of post-operating license transfer of control applications such as this one. The proper framework for analyzing such issues is the "significant change" standard. In applying this standard, the Commission should, as it has in other cases, defer to the conclusions of the FERC regarding the effects of the Transaction on competition.

Even if such deference were not appropriate here, the NRC should reject the antitrust comments raised by Plains, Southwestern and Las Cruces because they are wholly implausible. Those comments fall into two basic categories, neither of which has merit. Most of the arguments are made to establish a claim to the use of EPEC's SPP-WSCC transfer capability in the Eddy County tie not already being used by Southwestern in sales of power to other utilities.¹⁷ Some of the arguments concerning alleged anti-competitive effects relate to power sales to Mexico,

¹⁷ Such claims for individual competitive entitlements should be regarded skeptically, particularly in the electric utility industry. See Town of Concord v. Boston Edison Co., 915 F.2d 17, 21-22 (1st Cir. 1990) (where regulatory and antitrust schemes co-exist, competitive analysis must be sensitive to the distinctive economic and legal setting of the regulated industry to which it applies), cert. denied, 499 U.S. 931 (1991). It is injury to competition with which the Commission should be concerned, not potential injury to individual competitors. Brown Shoe Co. v. United States, 370 U.S. 294, 320 (1962); see Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 488-89 (1977).

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where, for various reasons, no basis for antitrust concern exists.

In support of their Application filed at the FERC, the Applicants presented the testimony and exhibits of Dr. George R. Hall. Having followed the analytic paradigm laid out in the FERC's recent Enterigy and CINergy decisions to assess the competitive effects of the Transaction,¹⁸ Dr. Hall concluded that the Transaction would not reduce competition with respect to the "products" and "markets" the FERC historically has examined to determine whether a merger would enhance or create market power. Dr. Hall concluded that the Transaction will not injure competition in any market and that the Transaction will instead enhance competition by increasing the options potentially available to participants in the bulk power markets of the southwestern United States.¹⁹

The Transaction will effect an end-to-end merger that will not result in the aggregation of control over any competing transmission paths. In this respect, the Transaction bears a

¹⁸ Cincinnati Gas & Electric Company and PSI Energy, Inc., 64 FERC ¶ 61,237 (1993); Enterigy Services, Inc. and Gulf States Utilities Company, 62 FERC ¶ 61,073, reh'g, 64 FERC ¶ 61,001 (1993).

¹⁹ Plains has presented an analysis, which it has previously submitted to the FERC, that it claims shows that EPEC will have market power in a geographic market consisting of utilities operating in New Mexico. Plains' analysis is based upon faulty data with respect to the extent to which Public Service Company of New Mexico will have uncommitted capacity available for sale in the short run and the extent to which EPEC could reliably import capacity from the SPP for resale in the WSCC.

strong resemblance to UtiliCorp's 1991 acquisition of Centel's electric properties. After examining the competitive implications of that acquisition, the FERC observed:

The merging companies do not appear to own or control any competing transmission paths. There is no evidence that the merger will consolidate control on any transmission lines or interconnections along any valuable trade corridors. In sum, we find no evidence that the changes in transmission ownership will enhance the merged company's ability to raise prices or exclude competitors, either generally or along any specific transmission path.²⁰

The facts surrounding the Transaction at issue here support the same conclusion. The Applicants are separated by Southwestern, a utility that has refused to provide transmission service across its system in the past.²¹ As a consequence, EPEC and the CSW Operating Companies have not competed either in the provision of transmission services or in the sale of power. Hence, the Transaction will not bring under common control former competitors or deprive other bulk-power market participants of an alternative choice of power suppliers or transmission services formerly available to them.²²

²⁰ UtiliCorp United, Inc. and Centel Corporation, 56 FERC ¶ 61,031 at 61,122 (1991).

²¹ See Appendix A.

²² See Entergy, 62 FERC ¶ 61,073 at 61,374 (loss of Gulf States as an independent competitor will not adversely affect competition because "present competition between the two systems is . . . de minimis"). The only actual or potential competition between Applicants has been for the purchase and sale of economy energy in transactions with Southwestern. In post-merger

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Nevertheless, Southwestern and Las Cruces allege that EPEC's control over the "uncommitted" capacity in the Eddy County tie makes it both a monopolist and a monopsonist. Because EPEC will file "open access" transmission service tariffs with the FERC once the Transaction is completed, EPEC will not have exclusive control over the Eddy County tie, or the absolute ability to exclude Southwestern (or any bona fide municipal utility established in Las Cruces) from access to the tie.²³ Quite the contrary, under EPEC's proposed open access tariffs, competition will be enhanced as access to EPEC's transmission lines is made available to others.²⁴ As has been more fully briefed in

²²(...continued)

operations, Applicants will continue to offer to sell economy energy supplies to, and to purchase economic energy from, Southwestern. Indeed, the Transaction is likely to lead to increased energy trade with Southwestern because, after the Transaction is completed, CSW intends to have EPEC become a member of the Western Systems Power Pool (WSPP), in which Southwestern, PSO and SWEPCO have been active participants.

²³ As stated in their FERC Application, Applicants intend to honor their coordination agreements. FERC Application at 29. Hence, Southwestern will retain its contract right and obligation to sell 50-75 MW of power to EPEC.

²⁴ Southwestern's complaint, Comments at 2, that it will be "largely" surrounded by the post-merger CSW system and that the CSW System will "control all of the viable transmission paths for the sale of Southwestern's power in the Southwest" is gross hyperbole. Because they offer transmission service under tariffs of general availability and other rate schedules filed with the FERC, the CSW Operating Companies have given up "control" of their transmission systems. For example, in 1996 Southwestern will begin a multi-year capacity sale to The Empire District Electric Company (EDE). That sale is made possible because PSO has voluntarily agreed to transmit the power to EDE for Southwestern (even though PSO and SWEPCO were unsuccessful bidders to supply the same capacity to EDE).

filings with the FERC, the Commenting Parties' specific contentions do not support a contrary conclusion.

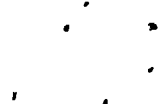
Southwestern's affiant Professor Kalt argues that the Transaction "warrants extremely close scrutiny and possible remedial conditions" because, in his view, the Transaction will "create problems of monopsony market power" for Southwestern.²⁵ However, it appears clear that Southwestern will have little, if any, uncommitted capacity for sale in the short-run capacity market (1998).²⁶ In any event, the assertion of monopsony power also depends on the assumption that the Applicants will not allow Southwestern to use EPEC's transfer capability in the Eddy County tie that is not otherwise being used for firm power transfers, a premise that is likewise false, as explained immediately below.

Under EPEC's pro forma open access transmission tariffs, Southwestern is an Electric Utility that is entitled to make

²⁵ Southwestern Comments, Kalt Aff. at 40.

²⁶ Based on Southwestern's DOE Form 411 report filed in 1993 and the data Southwestern supplied to SPP for that purpose, Dr. Hall found that, after reducing Southwestern's nameplate generating capability for the 15% capacity reserve (18% planning reserve) necessary to satisfy the basic SPP planning guidelines, Southwestern would be 92 MW short in 1998.

Southwestern does not dispute the accuracy of information Southwestern provided to the SPP, which was subsequently reflected in the DOE Form 411 Report on which Dr. Hall relied for his market analysis. Furthermore, on February 25, 1994 (the day on which Southwestern filed its motion to intervene in FERC Docket No. EC94-7-000), Southwestern sent to the Public Utility Commission of Texas (PUCT) a Load and Capacity Forecast that contains data that reveal that Southwestern will be capacity short by at least 24 MW in 1998. See Appendix B.



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application for service. Despite Southwestern's attempts to mischaracterize the nature of the service provided under the EPEC tariffs, transmission service through the Eddy County tie will be made available in accordance with the proposed tariff terms.²⁷ Moreover, under Section 6.6 of the proposed EPEC Firm Transmission Service Tariff, if necessary, EPEC will redispatch its system in order to free up transmission capacity for use by others. While EPEC and CSW intend to deploy the Eddy County tie in the economic dispatch of the CSW System, under the proposed EPEC Firm Transmission Service Tariff, EPEC's dispatch order can be changed to permit Southwestern to sell even more capacity and/or energy into the WSCC than it now does (assuming Southwestern has any uncommitted capacity available to sell).

Las Cruces' argument that EPEC controls essential facilities and is using the merger to deny access to Las Cruces²⁸ fails to meet the well-established legal requirements for such claims.²⁹

²⁷ Section 1.34 of the EPEC proposed Firm Transmission Service Tariff defines Transmission System to exclude EPEC's transmission facilities related to its remote generating stations, Four Corners and Palo Verde, because those facilities are not a part of EPEC's core transmission system. However, the definition does not exclude the Eddy County tie or the related AC facilities. To avoid any possibility of confusion, EPEC has committed to the FERC that EPEC will amend its pro forma tariffs to specify expressly that the Eddy County tie and the related 345 kV line to EPEC's Amrad substation are included in the definition of Transmission System.

²⁸ Las Cruces Comments at 26.

²⁹ The proponent of an essential facilities claim must show: (1) control of an essential facility by a monopolist; (2) a competitor's inability, practically or reasonably, to duplicate
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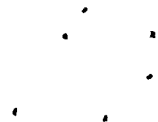
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There has been no showing that the Eddy County tie represents an essential facility for Las Cruces.³⁰ Las Cruces has not even attempted to demonstrate to the NRC Staff that access through EPEC's transmission system could not practically be duplicated, or that Las Cruces could not feasibly purchase power from new generating capacity located close to its load, thereby avoiding the need to use the Eddy County tie. In any event, Las Cruces has not been denied access to the Eddy County tie.

Lastly, Las Cruces fails to recognize that the Transaction has nothing whatsoever to do with EPEC's ownership and control of Eddy County tie capacity. EPEC exercises that control now. All that the Transaction will change is that, after it is completed, EPEC will make its transmission facilities available for use by

²⁹(...continued)
the essential facility; (3) the denial of the use of the facility to the competitor; and (4) the feasibility of providing the facility to the competitor. MCI Communications Corp. v. AT&T, 708 F.2d 1081, 1132-33 (7th Cir.) citations omitted, cert. denied, 464 U.S. 891 (1983). These requirements have not been satisfied here. See also City of Chanute, Kansas v. Williams Natural Gas Co., 955 F.2d 641, 648-649 (10th Cir. 1992) (essential facilities claim fails if reasonable access is available to the essential facility).

³⁰ Las Cruces cannot turn the Eddy County tie into an essential facility simply by claiming it represents the cheapest or most convenient access to bulk power. See City of Anaheim v. Southern California Edison Co., 955 F.2d 1373, 1381 (9th Cir. 1992) ("[T]he fact that the Cities could achieve savings at the expense of Edison and its other customers is not enough to turn the Pacific Intertie into an essential facility").



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eligible Electric Utilities in accordance with the terms of its proposed open access tariffs.³¹

Nor will the Transaction result in monopoly power with regard to energy sales to Las Cruces, Ciudad Juárez, or any other market. Southwestern's contention that the Transaction would eliminate competition between CSW and EPEC for export sales to Mexico through the Commission Federal de Electricidad (CFE) is likewise without merit. There are obstacles to the transfer of power between the Noreste region, currently served by CSW, and the Norte region, adjacent to EPEC, which result from a North-South transmission constraint between Juárez and Chihuahua, that limits flows north into the Juárez sub-region located in the northern-most part of CFE's Norte region. Upgrading of other lines identified by Professor Kalt will do nothing to address this problem. More fundamentally, Professor Kalt fails to address the fact that, due to the long distances between CPL's ties to CFE and the Juárez sub-region of CFE that EPEC serves and the fact that the CFE system is comprised mostly of 230 kV lines, transfers over the 800 miles that lie between CPL's ties to CFE

³¹ EPEC's proposed tariff excludes from the definition of "Electric Utility" an electric distribution system that is established to serve customers formerly served by EPEC if "such system was established solely as a means to facilitate or obtain transmission service for ultimate consumers ['retail wheeling']." This language is based upon language the FERC approved in Entergy's open-access tariff. See Entergy Services, Inc., 58 FERC ¶ 61,234 at 61,763, aff'd on reh'g, 60 FERC ¶ 61,168 at 61,626-27 (1992). However, if Las Cruces establishes a legitimate electric utility that holds itself out to serve all users it would qualify as an Electric Utility that is eligible for service under the proposed tariff.

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and CFE's Juárez sub-region would likely result in losses as high as 30%, thereby making any attempt to compete for load uneconomic.³²

In addition, there is substantial reason to believe that CFE will have little if any demand for imports of power from the United States to meet its Norte and Noreste region loads in the near future. New power generation facilities are planned to be constructed near Ciudad Juárez,³³ and EPEC's informal discussions with CFE's central planning department personnel indicate that CFE does not plan to rely on imports of power into those regions to meet long-term resource requirements.³⁴

III. THE PRESENT CASE MUST BE ANALYZED UNDER THE "SIGNIFICANT CHANGE" STANDARD MANDATED BY SECTION 105c

The Commenting Parties make several procedural arguments regarding the way in which the NRC should resolve the antitrust issues they alleged to be raised by EPEC's Application. The central contention of these arguments is that the NRC must engage in an in-depth review of those antitrust issues, including holding public hearings and providing private parties with opportunities to intervene and to conduct extensive discovery. These arguments are at odds with relevant statutes, Commission decisions and regulations, and with past NRC similar practice.

³² See Appendix C at 8-10.

³³ Hall (FERC) testimony at 55-59.

³⁴ See Appendix D.

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The authority of the NRC to conduct antitrust reviews in connection with licensing proceedings rests on section 105c of the Atomic Energy Act of 1954, as amended ("AEA"). That section provides in relevant part:

(1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection

(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103. Provided, however, That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

42 U.S.C. § 2135(c) Section 105c thus requires that applicants for a facility license under section 103 of the Act be subject to an initial extensive antitrust review at the time that application is made for a construction permit. Such a review includes formal referral of the antitrust issues to the Attorney General. Subsequent in-depth reviews will not be conducted unless the NRC concludes that "significant changes" have occurred since the intensive review conducted prior to the time the construction permit was issued.

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The Commission's decisions are uniformly consistent with this reading of the Act. For example, in South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit No. 1), CLI-81-14, 13 NRC 862 (1981), the Commission concluded: "For all the foregoing reasons we decline to find that significant changes have occurred in the activities or proposed activities of applicants within the meaning of section 105[c](2). We therefore do not request the formal advice of the Attorney General." Id. (emphasis added). See also Houston Light & Power Company (South Texas Project, Units 1 and 2), CLI-77-13, 5 NRC 1303, 1309-1322 (1977).

The Commission has consistently resisted arguments by parties seeking to expand its limited antitrust review jurisdiction under section 105c. For example, in its relatively recent decision in Ohio Edison Company (Perry Nuclear Power Plant Unit 1) CLI-92-11, 36 NRC 47 (1992), the Commission noted past cases in which parties had attempted to persuade the Commission to leverage its broad power to terminate licenses into a power to conduct a full antitrust review after the issuance of construction permit:

[St. Lucie] . . . involved the question of whether the Commission has authority to conduct antitrust review if significant changes occurred after a license had been issued Relying on Section 186(a) of the AEA, the petitioners argued that under the Commission's broad powers to revoke a license, the Commission had the authority to order antitrust review after the operating license had been issued. The Atomic Safety And Licensing Appeal Board rejected these

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arguments. The Appeal Board found that after South Texas, it was clear that 'the NRC's supervisory antitrust jurisdiction over a nuclear reactor licensee does not extend over the full 40-year term of the operating license but ends at its inception' . . .

36 NRC 47 at 57 (footnote omitted).

As the Commission further noted in Perry:

Congress constructed Section 105(c) in such a way that it essentially prohibited postlicensing antitrust review undertaken to determine adverse antitrust aspects of a license. This prohibition was intended to eliminate the uncertainty of the further antitrust review after the licensee had already invested considerable resources. In light of these restrictions on postlicensing antitrust review, the Commission concluded in South Texas that the NRC does not have broad antitrust policing powers independent of licensing which could be relied upon as authority for postlicensing antitrust review undertaken to place new conditions in a license.

36 NRC at 56.

Southwestern contends that the NRC must conduct a full-scale antitrust review here, including a formal referral to the Attorney General. Indeed, Southwestern apparently believes that the NRC must conduct a complete antitrust review in connection with any transfer of control pursuant to 10 C.F.R. § 50.80. Southwestern Comments at 9.

The weakness of Southwestern's argument is exposed in the precedent which Southwestern cites to support it. All of the cases Southwestern cites involved applications for the issuance

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of construction permits.³⁵ Those cases fall squarely within the requirement of section 105c for mandatory NRC antitrust reviews in connection with construction permits, discussed above, and are, therefore, readily distinguishable from the pending request.

The Commission's Staff has also recently made clear its view that only narrow "significant change" review is required in license amendment and license transfer cases:

In general, post initial operating license amendment applications have included an antitrust review by the staff and consultations with the Attorney General. The review by the staff focuses on significant changes in the competitive market caused by the proposed change in ownership since the last antitrust review for the facility and its licensees. The staff review takes into account related proceedings and reviews in other federal agencies (e.g. FERC, SEC, or DOJ).

Public Service Co. of New Hampshire (Seabrook Nuclear Station, Unit 1), Docket No. 50-443A, Staff Recommendation, No Post OL Significant Antitrust Changes 10 (Apr. 1991) (emphasis added). See also Gulf States Utilities Company (River Bend Station), Docket No. 50-458, Staff Recommendation, No Post OL Significant

³⁵ In support of these arguments, Southwestern cites South Carolina Electric & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), 11 NRC 817 (1980), Detroit Edison Co. (Enrico Fermi Atomic Power Plant), 7 NRC 583 (1978), and Houston Lighting and Power Co. (South Texas Project, Units 1 and 2), 5 NRC 1303 (1977). See Southwestern Comments at 8-10. Contrary to Southwestern's argument, the Commission in South Texas, supra, specifically declined to decide "whether antitrust review may be initiated in the case of an application for a license amendment ... for transfer of control of a license...." 5 NRC 1303, 1318.

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Antitrust Changes 9-12 (Oct. 1993). Although NRC Staff interpretations are not binding precedent, they plainly represent informed interpretations of the relevant statutes and regulations.

In summary, the Commenting Parties have not advanced a single reason, and no valid reason exists, why the NRC Staff should depart from these same procedures as it considers the instant Application of EPEC for indirect transfer of control.

IV. IN MAKING ITS "SIGNIFICANT CHANGE" DETERMINATION, THE NRC SHOULD RELY ON THE FERC'S ANTITRUST ANALYSIS

In deciding whether a "significant change" has occurred with respect to EPEC's interest in PVNGS for purposes of section 105c of the Act, the NRC may, and should, rely on the analysis of the FERC in the parallel proceeding currently pending before that agency. In its March 14, 1994 Notice of Consideration of Transfer of Control of Ownership of Licensee and Opportunity for Public Comment on Antitrust Issues, the NRC states that it "is aware of and is closely following a proceeding at the [FERC] concerning CSW's proposed acquisition of EPE" and "will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC." This consideration constitutes appropriate "watchful deference" by the NRC to a sister agency already considering the rate, transmission, and competitive aspects of the Transaction.

Although apparently acknowledging the need for the Commission to await the outcome of the FERC's antitrust review,

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see, e.g., Southwestern Comments at 4, the Commenting Parties nevertheless contend that the NRC must examine all these issues de novo and hold a hearing to consider this matter. See, e.g., Plains Comments at 25. This contention is at odds with the principle of watchful deference and established NRC procedures applicable to significant change determinations and, if followed, would be both duplicative of FERC efforts and wasteful of NRC resources.

The underpinnings of the Commission's deference to FERC in cases such as this are explained in the Commission's decision in South Texas, supra. In that case, the Commission concluded that the limitations placed by section 105c of the AEA on its primary antitrust review responsibilities are consistent with the overall statutory scheme for allocating responsibilities among the agencies. 5 NRC at 1316. In particular, the Commission noted that, while the NRC performs a unique role in enforcing health and safety standards applicable to nuclear facilities, the Commission's ability to review antitrust matters "is not unique." Id. Indeed, other agencies have far greater responsibilities for articulating and enforcing antitrust standards. Thus, it is reasonable that the NRC's primary responsibility for antitrust matters be confined by section 105c of the Act to the time of the initial licensing of a facility. After the construction permit stage, the scope of the antitrust review at the operating license stage is more limited and is based upon a finding of "significant changes" that have occurred since the prior antitrust review.

Thereafter, however, "whatever form of remedy the [NRC] can offer is not appreciably different from that which may be fashioned by the traditional forums." Id. Of course, the same considerations apply to the transmission disputes here, for which the FERC has far greater responsibility than the NRC.

Important public policy considerations also support deference to the FERC in this case. All of the transmission and antitrust issues raised by Southwestern, Las Cruces and Plains have already been raised in their filings with the FERC. It would be wasteful of scarce agency resources to permit the Commenting Parties to litigate the same issues before two federal agencies.

Nor can it be argued that deference to the FERC would result in any unreasonable delay in the NRC's consideration and disposition of this case. All of the antitrust issues raised by Southwestern, Las Cruces and Plains already have been fully briefed before the FERC, and an initial order by the FERC is expected to be issued soon.³⁶

V. REGULATORY AUTHORITY CITED BY SOUTHWESTERN DOES NOT MANDATE REJECTION OF EPEC'S LICENSE APPLICATION NOR REFERRAL TO THE ATTORNEY GENERAL

In a novel but unsupported argument, Southwestern contends that the Commission should dismiss or hold in abeyance the Application, because it does not include required antitrust information. Southwestern Comments at 11-12. This argument

³⁶ See note 3, supra.

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exhibits a misunderstanding of the Commission's regulations and the antitrust review process. 10 C.F.R. § 50.80(b) provides that "[a]n application for transfer of a license shall include . . . the information required by § 50.33a" (emphasis added). Southwestern asserts that § 50.33a requires EPEC to submit extensive antitrust-related information, as set forth in Appendix L to 10 C.F.R. Part 50. Southwestern has misinterpreted § 50.33a, which provides in relevant part: "An applicant for a construction permit for a nuclear power reactor shall submit the information requested by the Attorney General as described in appendix L to this part, if the application is for a class 103 permit and if the applicant has electrical generating capacity exceeding 1400 MW(e)." Id. § 50.33a(a)(1) (emphasis added). Section 50.33a thus requires submission of information only by applicants for construction permits. See also § 50.33a, subsections (a)(2) ("An applicant for a construction permit"), (a)(3) (same), (b) ("[A]ny person who applies for a class 103 construction permit"), (d) (same), and (e) (same). As Southwestern well knows, EPEC is not an applicant for a construction permit. Therefore, § 50.33a by its terms is inapplicable.

This conclusion is consistent with the regulatory structure discussed above. The information required by Appendix L of 10 C.F.R. Part 50 is "Information Requested by the Attorney General for Antitrust Review Facility License Applications" (emphasis added). That is, it is information that will be

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submitted to the Attorney General for full-scale antitrust review pursuant to section 105(c)(1) of the AEA.

Also consistent is 10 C.F.R. § 2.101(c), which indicates that the notice published in the Federal Register shall state that an application contains the information required by Appendix L -- "except for those applications described in §§ 2.101(e) and 2.102(d)(2)." Applications described in those two provisions are, of course, applications concerning which the NRC Staff has been delegated the responsibility to determine whether "significant changes" have occurred. Thus, contrary to Southwestern's assertions, the Commission's regulations do not contemplate that the information set forth in Appendix L be included with every application for a license.

Southwestern also cites to Regulatory Guide 9.3 to support its argument that additional information must be submitted. Compliance with Reg. Guide 9.3, however, is not mandatory. As Reg. Guide 9.3 plainly states on its first page:

Regulatory Guides are not substitutes for regulations and compliance with them is not required. Methods and solutions different from those set out in the Guides will be acceptable if they provide basis for the findings requisite to the issuance or continuance of a permit or license by the Commission.

Reg. Guide 9.3 at 1.

Southwestern has also overlooked the long-established NRC precedent that Regulatory Guides promulgated by the NRC Staff are not regulations and are not entitled to be treated as such. Gulf

States Utilities Co., (River Bend Station, Units 1 and 2), ALAB-444, 6 NRC 760, 772 (1977). Rather, Regulatory Guides are subject to question in the ordinary course of adjudicatory hearings, and when this occurs, are to be regarded merely as the views of one party which cannot serve as evidence of their own validity, but must be supported by other sources.³⁷ Moreover, NUREGs (another form of Staff document cited by Southwestern) have also been held to be the functional equivalent of a Regulatory Guide and also do not themselves establish regulatory requirements.³⁸ In sum, there is no support in NRC

³⁷ Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-179, 7 AEC 174 n.27 (1974); Consolidated Edison of N.Y., Inc. (Indian Point, Unit 2), ALAB-188, 7 AEC 323, 333 and n.42, reversed in part on other grounds, CLI-74-23, 7 AEC 947 (1974); Philadelphia Electric Co. (Peach Bottom Atomic Power Station, Units 2 and 3), ALAB-216, 8 AEC 13, 28 n.76 (1974); Nuclear Power Station), ALAB-217, 8 AEC 61, 68 (1974); Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Station), ALAB-229, 8 AEC 425, 439 n.31, reversed on other grounds, CLI-74-40, 8 AEC 809 (1974); Project Management Corporation (Clinch River Breeder Plant), LBP-76-14, 3 NRC 430 (1976); Porter County Chapter of the Izaak Walton League of America v. AEC, 533 F.2d 1011 (7th Cir. 1976).

³⁸ See also Carolina Power & Light Co. (Shearon Harris Nuclear Power Plant), ALAB-852, 24 NRC 532 (1986); Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), ALAB-819, 22 NRC 681, 710 (1985), review denied, CLI-86-5, 23 NRC 125 (1986); Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit No. 1), ALAB-698, 16 NRC 1290, 1298-99 (1982), aff'd in part on other grounds, CLI-83-22, 18 NRC 299. Moreover, Staff "position papers" have no legal significance for any regulatory purpose; and are entitled to less weight than an adopted regulatory guide. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1), ALAB-224, 8 AEC 244 (1974); Southern Cal. Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-268, 1 NRC 383 (1975); Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), ALAB-355, 4 NRC 397, 416 (1976).

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jurisprudence or practice for the proposition that EPEC's Application should be rejected or held in abeyance for not setting forth all the information listed in Appendix L to Part 50.

Finally, Southwestern completely overlooks the standard NRC practice that, if the NRC Staff needs any additional information in connection with its review, the NRC Staff need only send a request for additional information. Of course, as the Application states, EPEC has committed itself to provide additional information as the NRC Staff may request. Under no circumstances, however, does Southwestern have standing to compel the NRC Staff to review, or not review, any particular information.

VI. EPEC'S NEGOTIATION WITH PLAINS ARE ONGOING, PRE-DATE THE JOINT APPLICATION, AND PROVIDE NO BASIS FOR AN ANTITRUST HEARING

Plains argues that the NRC should "[c]onvene an antitrust hearing on the issue[] of . . . EPE's failure to implement the June 1987 Settlement agreement" Plains Comments at 28. Plains further demands that the Commission "[r]equire at a minimum that, as a precondition to the indirect transfer of control for which authorization is sought in the Application, the full and complete implementation of the June 1987 settlement agreement." Id.

In order to resolve the certain concerns raised by Plains in connections with the 1986 application of EPEC to the Commission,

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EPEC entered into a June 5, 1987, letter of understanding (LOU) with Plains.³⁹ The LOU made provision for the performance of certain system studies requested by Plains. The LOU further provided that, if the studies showed that additional transfer capability into Southern New Mexico could be gained from the installation of compensation devices (i.e, system enhancements), Plains could have the option of obtaining up to 50 MW of additional southern New Mexico import capability brought about by participating in the construction of such system enhancements. In the alternative, Plains could elect to purchase firm transmission service from EPEC. LOU at ¶ 4. The LOU contemplated that Plains would exercise its option by negotiating participation and operating agreements with EPEC. See LOU at ¶ 6.

The studies were completed in 1988. Thereafter, Plains and EPEC began negotiation of a Participation Agreement, pursuant to which Plains would acquire an ownership interest in EPEC's Springerville-Luna 345 kv transmission line (commonly known as the Arizona Interconnection Project or "AIP") and in such system enhancements (known together as "Enhanced AIP") and pay its "proportional share of AIP costs and enhancements on a monthly basis as they are incurred." Id. However, a dispute between EPEC and Public Service Company of New Mexico (PNM) regarding the extent of additional southern New Mexico import capability that

³⁹ A copy of this Letter of Understanding was attached to Plains Comments as Exhibit 2.

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the AIP would provide complicated EPEC's negotiations with Plains.

For nearly a decade, the operation of the transmission system in New Mexico has been governed by nomograms which establish the maximum import levels into portions of the New Mexico transmission system that can safely be permitted in the event of the loss of the transmission facility most critical to maintaining system reliability. See Plains 1986 Comments at 7-8.⁴⁰ The operating nomograms which were being used at the time of Plains' earlier comments limited total Southern New Mexico imports to 378 MW, or 478 MW after payments to PNM for wheeling.

In anticipation of the completion of the AIP, EPEC and PNM developed new nomograms in 1989 and 1990. Those nomograms indicated that, with the AIP in service, southern New Mexico imports in excess of 1000 MW could be made.

However, prior to allowing energization of a portion of the AIP in 1989, PNM complained that operation of the southern New Mexico transmission system to import amounts as high as 1000 MW would lower northern New Mexico import capability below "historical levels." After months of negotiation and being unable amicably to resolve this dispute with PNM, EPEC sued PNM in March 1990.⁴¹ Subsequently, EPEC and PNM agreed to binding

⁴⁰ Attached to Plains Comments as Exhibit 1.

⁴¹ The lawsuit involved the construction of an interconnection agreement between EPEC and PNM.

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arbitration to resolve this dispute. The arbitration proceedings were completed in December 1990.

The arbitrators decided that, even with the AIP in place, southern New Mexico import capability could not be increased significantly (560 MW post-AIP vs. 378 MW pre-AIP) from the import capability of the system without the AIP unless substantial wheeling payments were made to PNM. The arbitration order therefore significantly limited the rights of EPEC and other utilities to import power into southern New Mexico. Equally important, the arbitration order significantly complicated EPEC's negotiations with Plains because, contrary to the mutual expectation of Plains and EPEC when they signed the LOU, the planned construction of the AIP enhancements would not, as a practical matter, provide the transfer capability to import 1000 MW from the north into southern New Mexico.

Nevertheless, EPEC continued its negotiations with Plains into the fall of 1991. Although by October 1991 EPEC had made significant progress in negotiating a Participation Agreement with Plains, in December 1991 Plains filed suit against EPEC, in the U.S. District Court for New Mexico demanding specific performance and/or unspecified damages under the LOU.⁴² In January 1992, EPEC filed with the Bankruptcy Court to reorganize

⁴² The LOU specifically provides that disputes regarding Plains' option to participate in the ownership of an enhanced AIP would be subject to arbitration in accordance with the procedures outlined in an exhibit to the LOU.

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its business and Plains' suit against EPEC was stayed pending resolution of the bankruptcy proceeding.

In November 1993, in the midst of the bankruptcy process and with many other important issues pressing, EPEC, nevertheless, reopened its negotiations with Plains in an attempt to resolve their longstanding dispute. Such negotiations intensified after the Bankruptcy Court, in early December 1993, confirmed EPEC's Third Plan of Reorganization. In December 1993, EPEC made a written proposal to Plains to resolve this matter. When Plains filed its comments with the NRC on April 1, 1994, EPEC was still awaiting a response from Plains to EPEC's December 1993 proposal. Since that time, Plains has responded in a constructive manner and further discussions between Plains and EPEC have served to narrow their differences considerably. Those talks are continuing.

Plains' dispute with EPEC pre-exists EPEC's bankruptcy and EPEC's agreement to be acquired by CSW as the basis for EPEC's reorganization; and these disputes would exist if EPEC had never signed the merger agreement with CSW. Accordingly, they are also disputes that pre-exist the joint Application APS and EPEC have made for NRC consent to the indirect transfer of control that the Transaction will effect. Moreover, no antitrust license conditions are involved.⁴³ The LOU involves a utility-related

⁴³ Plains is not seeking here to enforce license conditions. There are no antitrust license conditions associated with the operating licenses of EPEC which APS and EPEC seek to
(continued...)

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planning function and the negotiation of an operational agreement relating to the use of transmission lines in New Mexico.⁴⁴

While, as noted above, EPEC has made substantial progress in its discussions with Plains, Plains' arguments that an antitrust hearing be held or that the contractual dispute be certified to the Commissioners are considerably wide of the mark.⁴⁵

We trust the NRC Staff will find the foregoing information helpful as it considers whether the Transaction represents a significant change in EPEC's activities that would have an adverse effect on competition. If we can answer any questions, or provide additional information, kindly let us know. In particular, we would be pleased to provide the Staff with copies of any of the FERC filings referenced herein.

⁴³(...continued)

amend. The LOU does not even involve a formal settlement of a licensing proceeding, but was simply the basis upon which Plains voluntarily withdrew antitrust comments it had previously filed.

⁴⁴ While these lines are used in part to deliver to EPEC's load centers its share of the output of PVNGS, the lines are not used in or necessary to the operation of that station.

⁴⁵ In Gulf States Utilities Company (River Bend Station, Unit 1), 1994 NRC Lexis 8, 13, n.5 (Jan 27, 1994), the Licensing Board noted: "Absent radiological health and safety concerns, environmental concerns, or antitrust matters subject to NRC license conditions, contractual disputes between co-owners in nuclear facilities ordinarily should be resolved by the appropriate state, local, or federal court. Contract disputes are not within the scope of this proceeding and will not be addressed by this board." At most, this is a contractual matter, not including antitrust license conditions, which is the subject of litigation elsewhere. Whatever is left of this matter does not constitute a "significant change" associated with the instant application.

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Pursuant to 10 C.F.R. §§ 2.708(e) and 2.102, it is requested that all correspondence relating to the above matter be addressed to the respective counsel for EPEC and CSWS designated below.


Respectfully submitted,

EL PASO ELECTRIC COMPANY

Of Counsel:

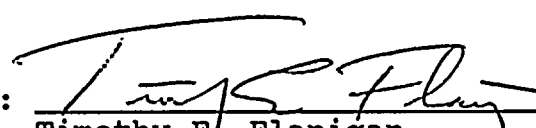
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Robert S. Wood (Mail Room 12 E4)
Brian Holian (Mail Room 13 E18)
William F. Conway
Jack Newman, Esq.
Donald R. Allen, Esq.
Richard N. Carpenter, Esq.
J. Cathy Fogel, Esq.
Norma K. Scogin, Esq.
Alan J. Statman, Esq.
Steve Olea
Ken Johnston
Aubrey V. Godwin
Betsy Bayless
Jade Eaton

APPENDIX A

COUNTY OF EL PASO)
)
STATE OF TEXAS) SS.

AFFIDAVIT OF FREDERIC E. MATTSON

My name is Frederic E. Mattson. I am Vice President of Power Supply of El Paso Electric Company.

On June 1, 1992, I telephoned Mr. David Wilks of Southwestern Public Service Company (SPS) to ask that SPS provide El Paso firm transmission service across SPS' system so that El Paso could purchase from Public Service Company of Oklahoma (PSO) power needed to backup El Paso's 150 MW sale of power and energy to Comisión Federal de Electricidad (CFE). In April 1991, El Paso and CFE had entered into a power sales agreement that has a 5½ year term ending December 31, 1996. In order to assure that we could meet our commitment to CFE, in 1992 we sought back-up power supplies for the then remaining term of the CFE sale.

At the time that I made the phone call to Mr. Wilks, El Paso was negotiating, but had not signed, an agreement with SPS for the purchase of the required back-up power supply. However, while El Paso's negotiations with SPS were ongoing, I learned that a lower cost supply could be purchased from PSO. In order to gain access to firm power supplies from PSO, it was necessary to obtain transmission service from SPS. ∴

Mr. Wilks denied the request. Mr. Wilks said that SPS could not provide wheeling on its transmission system in an east to west direction without overloading its Tuco 230-345 KV autotransformer in the event that SPS were to lose one of its 550 MW Tolk generating units. Mr. Wilks also said that the SPS system would experience voltage sags in such an event if wheeling were also being provided. Mr. Wilks said that the autotransformer had a 570 MW limit.

Mr. Wilks said that his explanation for the denial of service was based on a load flow study that SPS had done in April 1989. Mr. Wilks also explained that one of SPS' wholesale customers, Lubbock Power and Light, had earlier requested SPS to wheel power and that SPS had had to explain its refusal to the Public Utility Commission of Texas. Finally, Mr. Wilks said that a planned intertie to the east would give SPS the ability to provide east to west wheeling on its system in the future.

Because SPS would not provide transmission service to deliver to El Paso the lower cost power supply that was available from PSO, El Paso went forward with the more expensive purchase from SPS. Through September 30, 1993, El Paso has paid \$8.3 million for firm power to back up El Paso's sale of firm power to CFE.

Frederic E. Mattson
Frederic E. Mattson

Subscribed and sworn to before me
this 29 day of October 1993.

Archie M. [Signature]
Notary Public

**SOUTHWESTERN PUBLIC SERVICE COMPANY
LOAD AND CAPACITY RESOURCE PLAN
FILED MARCH 1, 1994 WITH THE PUBLIC UTILITY COMMISSION OF TEXAS**

Calendar Year 1995

MW

Peak Demand After Adjustments	3,242
Installed Capacity	4,062
Less Sales to Other Utilities:	
PNM ¹	200
TNP	66
EPE	50
Less Sales to Municipal Customers: ²	
City of Floydada	1
City of Brownfield	6
City of Tulia	3
Lubbock Power & Light	40
Net Resources	3,696
Peak demand plus 15% reserve margin	3,794
Deficit at 15% reserve margin	(98)

¹ Southwestern calls this "contract power" (Hudson, page 9).

Mr. Hudson implies this is a capacity sale, suggesting: "Southwestern will not be able to make any additional capacity sales through the Blackwater HVDC interconnection." [Emphasis added.]

The New Mexico PSC considers this transaction to be the equivalent of a firm capacity purchase by PNM. (Case No. 2146, Part II.)

² Southwestern's February 28, 1994 Resource Plan, Request 4.02, pages 42-45 of 52.

**SOUTHWESTERN DECEMBER 31, 1993
LOAD AND CAPACITY RESOURCE PLAN
FILED MARCH 1, 1994 WITH THE PUBLIC UTILITY COMMISSION OF TEXAS**

Calendar Year: 1993

MW

Peak Demand After Adjustments	3,299
Installed Capacity	4,110
Less Sales to Other Utilities:	
PNM ¹	200
EDE ²	35
TNP	66
EPE	75
Less Sales to Municipal Customers: ³	
City of Floydada	1
City of Brownfield	6
City of Tulia	3
Lubbock Power & Light	45
Net Resources	3,679
Peak demand plus 15% reserve margin	3,794
Deficit at 15% reserve margin	(115)

¹ Southwestern calls this "contract power" (Hudson, page 9).

Mr. Hudson implies this is a capacity sale, suggesting: "Southwestern will not be able to make any additional capacity sales through the Blackwater HVDC interconnection." [Emphasis added.]

The New Mexico PSC considers this transaction to be the equivalent of a firm capacity purchase by PNM. (Case No. 2146, Part II.)

² Southwestern calls this "an electric power service agreement" (Hudson, page 13). However, Mr. Hudson states: "... in order to make the Sale to Empire District, Southwestern had to make a 'System Participation Capacity' sale" EDE shows this as a capacity purchase in its Load and Resource plan.

³ Southwestern's February 28, 1994 Resource Plan, Request 4.02, pages 42-45 of 52.

**SOUTHWESTERN PUBLIC SERVICE COMPANY
LOAD AND CAPACITY RESOURCE PLAN
FILED MARCH 1, 1994 WITH THE PUBLIC UTILITY COMMISSION OF TEXAS**

Calendar Year 1997	MW
Peak Demand After Adjustments	3,355
Installed Capacity	4,135
Less Sales to Other Utilities:	
PNM ¹	200
EDE ²	35
TNP	66
Less Sales to Municipal Customers: ³	
City of Floydada	1
City of Brownfield	6
City of Tulia	3
Lubbock Power & Light	55
Net Resources	3,769
Peak demand plus 15% reserve margin	3,858
Deficit at 15% reserve margin	(89)

¹ Southwestern calls this "contract power" (Hudson, page 9).

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The New Mexico PSC considers this transaction to be the equivalent of a firm capacity purchase by PNM. (Case No. 2146, Part II.)

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³ Southwestern's February 18, 1994 Resource Plan, Request 4.02, pages 22-45 of 52.



**SOUTHWESTERN PUBLIC SERVICE COMPANY
LOAD AND CAPACITY RESOURCE PLAN
FILED MARCH 1, 1994 WITH THE PUBLIC UTILITY COMMISSION OF TEXAS**

Calendar Year 1998

MW

Peak Demand After Adjustments	3,414
Installed Capacity	4,273
Less Sales to Other Utilities:	
PNM ¹	200
EDE ²	35
TNP	66
Less Sales to Municipal Customers: ³	
City of Floydada	1
City of Brownfield	8
City of Tulia	3
Lubbock Power & Light	60
Net Resources	3,902
Peak demand plus 15% reserve margin	3,926
Deficit at 15% reserve margin	(24)

¹ Southwestern calls this "contract power" (Hudson, page 9).

Mr. Hudson implies this is a capacity sale, suggesting: "Southwestern will not be able to make any *additional capacity* sales through the Blackwater HVDC interconnection." [Emphasis added.]

The New Mexico PSC considers this transaction to be the equivalent of a firm capacity purchase by PNM. (Case No. 2146, Part II.)

² Southwestern calls this "an electric power service agreement" (Hudson, page 13). However, Mr. Hudson states: ". . . in order to make the Sale to Empire District, Southwestern had to make a 'System Participation Capacity' sale" EDE shows this as a capacity purchase in its Load and Resource plan.

³ Southwestern's February 28, 1994 Resource Plan, Request 4.02, pages 42-45 of 52.

County of Placer)
) SS.
State of California)

AFFIDAVIT OF HARRISON K. CLARK

My name is Harrison K. Clark. I am Manager of the Western Office of Power Technologies, Inc. (PTI). I have previously prepared affidavits that have been filed in Docket NO. TX94-2-000 regarding the improvements to the transmission system of Southwestern Public Service Company (Southwestern) that may be needed to enable Southwestern to provide the transmission services requested by El Paso Electric Company (EPEC) and the CSW Operating Companies.

Response to Fulton Affidavit and New Studies

As discussed in my earlier affidavits, under my guidance PSO ran load flow and stability studies to estimate what system improvements would be necessary. Those studies indicate that Southwestern would only need to make minor system modifications to provide the services. In particular, the studies showed that Southwestern may need to upgrade two transformers -- the Eddy County 230/115 kV transformer and the Tuco 230/115 kV transformer. Affidavit of Harrison K. Clark (TX94-2-000, Nov. 4, 1993) at 6. In my earlier affidavits, I indicated that it might also be necessary to install some new capacitor banks on Southwestern's system to support voltage. Id. I also explained that PSO's studies were based upon an amalgam of the official 1999 Southwest Power Pool and West Central Region base case models. Affidavit of Harrison K. Clark (TX94-2-000, Jan. 12, 1994), at 3-4. This model did not include a detailed representation of all of the buses on

Southwestern's system because PSO did not have access to such data. However, in my earlier affidavits I explained that studies performed on a more detailed Southwestern system model may show need for some minor equipment upgrades on lower voltage circuits that are not explicitly represented in the SPP model. I also expressed my confidence that such studies of Southwestern's system would not show the need for major transmission line changes or additions at 230 kV. Clark Aff. (Jan. 12, 1994) at 2.

I have reviewed the affidavit and exhibits of Mr. Fulton that were attached to Southwestern's Motion to Intervene in FERC Docket No. EC94-7-000. Affidavit of John S. Fulton (EC94-2-000, Feb. 23, 1994). Attached to Mr. Fulton's affidavit as Exhibit JSF-3 is a list of the internal system improvements he indicates would be required to provide the requested transmission services. Mr. Fulton's list reflects the results of additional load flow studies he performed since the time that Southwestern filed its Motion to Intervene in Docket No. TX94-2-000.

In that proceeding, we criticized Southwestern's earlier studies for failure to measure needed system modifications against base cases which would show the modifications that would be needed in the absence of the requested transfers. Clark Aff. (Jan. 12, 1994), at 4-5. We also criticized Mr. Fulton's earlier studies for using transfer amounts in excess of those for which service had been requested. Clark Aff. (Jan. 12, 1994), at 5-6. Apparently in preparation of Southwestern's Motion to Intervene in the merger proceeding, Mr. Fulton ran additional studies in which he took care not to repeat these errors.

In these new studies, Mr. Fulton used a feature of the PTI software that permits a seriatum analysis of the effects of outages

of individual system components on the loads imposed on other system components. He ran three sets of cases for each of the Winter peak period and the Summer peak period of the year 2000, or six cases in all. Fulton Aff. (Feb. 23, 1994), Exh. JSF-4. The three cases for each peak period consisted of a base case without any transfers, a change case modeling a 133 MW west to east transfer and a change case modelling a 133 MW east to west transfer. From these cases he identified contingencies that resulted in overloading of particular system components.

As did the Applicants, Mr. Fulton includes on his list of system components that require upgrading the Eddy County 230/115 kV transformer. Fulton Aff. (Feb. 23, 1994), Exh. JSF-3. The Applicants proposed to address this problem by changing out a transformer bank in the existing substation at an estimated net cost of about \$1.2 million (1993 dollars). Workpapers of James A. Bruggeman, filed Feb. 3, 1994, at 9. In contrast, Southwestern proposes to replace its existing transformer with a new, larger transformer at a cost of \$2.0 million (1993 dollars). Fulton Aff. (Feb. 23, 1994), Exh. JSF-3. Southwestern's cost is excessive considering that the circuit breakers are existing and the replaced transformer will be available for use elsewhere.

Mr. Fulton also includes on his list of necessary upgrades the replacement of the Cunningham Plant transformer, also at a cost of \$2 million. Fulton Aff. (Feb. 23, 1994), Exh. JSF-3. Because the exhibits provide no justification for this modification, I am unable to offer further comment.

Mr. Fulton has further included on his list of required internal system improvement the reconductoring and/or rebuilding of three transmission lines and the addition of a transformer at the

Gray County Interchange at a total cost of \$2.68 Million. Fulton Aff. (Feb. 23, 1994), Exh.JSF-3. All of these changes are proposed to address overloads of just a few percent or less, and are unnecessary if Southwestern employs the SPP Reliability Criteria or a otherwise were to follow normal utility reliability practices.

For example, Mr. Fulton contends it is necessary to add a new transformer at the Gray County Interchange to take account of a contingency that results in a loading that is just 85.2% of the manufacturer's top continuous rating, or 100.2% of the continuous thermal rating applied by Southwestern, which is 85% of the manufacturer's top continuous rating. Fulton Aff. (Feb. 23, 1994), Exh.JSF-4.

Ordinarily, a utility will not add a new transformer to guard against a two-tenths of 1% loading above the continuous thermal rating regardless of the philosophy of selecting the continuous thermal rating. Instead, the utility will adopt operating procedures such as generation dispatch changes, system re-configuration, opening overloaded lines, or transfer curtailment that can be done to eliminate the overload within 15 minutes after it occurs. Such operating procedures are widely used to accommodate transformer overloads of 120% or more of the continuous thermal rating. In his affidavit filed in Docket TX94-2-000, Mr. Fulton stated that "the remaining 15% of the transformer capacity is available for emergencies" indicating that Southwestern follows this procedure. Affidavit of John S. Fulton (TX94-2-000, Dec. 20, 1993), at 6. On this basis, Southwestern would allow transformer overloads to reach 118% of its "85%" rating, such overload being 100% of the manufacturer's top continuous rating ($1.18 \times 0.85 = 1.0$). However, Mr. Fulton apparently believes it

reasonable to place its emergency transformer capability off limits to the Applicants.

Similarly, Mr. Fulton proposes to recondutor several transmission lines on the basis of minimal overloads. He suggests that \$630,000 be spent to recondutor the Yoakum County Interchange to ODC 115 kV line because in one contingency the line was loaded to 100% of its continuous thermal rating. Fulton Aff. (Feb. 23, 1994), Exh. JSF-4, Schedule 5, 3rd page. Likewise he calls for recondutoring the Osage-East Canyon 115 kV line based upon a 2% overload, Fulton Aff. (Feb. 23, 1994), Exhibit JSF-4, Schedule 2, 3rd page, and to upgrade the Potter County-Harrington 230 kV line based upon a 3.4% overload. Fulton Aff. (Feb. 23, 1994), Exh. JSF-4, Schedule 5, 4th page. As is the case for transformers, utilities normally allow much larger overloads than these where re-dispatch, system re-configuration, opening overloaded lines, or transfer curtailment can correct the overload well before damage can be done. Under most line thermal rating practices, lines are given long-time overload ratings of 105 to 110% of continuous rating and short-time overload ratings of 110 to 120% of continuous ratings. Long-time ratings are usually four hour ratings and short-time ratings are usually 15 minute ratings. Mr. Fulton has not addressed the practice of using overload capability of transformers and lines or the dispatch, system reconfiguration, or transfer curtailment options which are available to Southwestern and are accepted practices covered by the SPP Reliability Criteria. Southwestern controls the Eddy County converter, and thus has at least the transfer curtailment option available to it.

On page 5 of his Affidavit, Mr. Fulton states that "internal system improvements, as shown in Exhibit JSF-4, will have to be

made due solely to Applicants proposed transaction across Southwestern's system." These additions may be triggered by the introduction of the 133 MW transfer, but they are hardly "due solely" to the 133 MW transfer. Some of the facilities may be very close to their thermal ratings without the 133 MW transfer and would reach those ratings in a few short years even without the 133 MW transfer. Also, in all cases, the upgrades called for by Mr. Fulton provide capacity well above that required to accommodate the 133 MW transfer.

In addition, in estimating new equipment costs, Mr. Fulton has apparently not allowed for the salvage value of replaced transformers. Transformers have a life expectancy of about 40 years, and are normally moved to new locations where their ratings are adequate for some future period of growth.

Based upon the information contained in Mr. Fulton's affidavit and exhibits, I conclude that the only internal upgrade that can be definitively identified as being necessary based on the studies completed to date is the Eddy County transformer. This upgrade is necessary to accommodate Southwestern's practice of rating its transformers at 85% of the manufacturer's top continuous rating because the existing transformer would operate continuously above this rating under certain normal operating conditions.

Mr. Fulton also states he did "additional studies" that show "that Southwestern needs to increase its interconnection capability with the SPP" to accommodate the 133 MW transfer requested by the Applicants. Fulton Aff. (Feb. 23, 1994), at 6. However, he does not state the nature of these studies, load flow or stability, and does not present them. Until such studies are presented and Southwestern clearly demonstrates that there are errors in the

Applicants' load flow and stability studies showing the existing system is adequate for the 133 MW transfers, I will continue to believe no new interconnection between Southwestern and the SPP is required.

Mr. Fulton states: "The studies filed in my affidavit in Docket No. TX94-2-000 fully support the fact that another strong 345 kV interconnect is needed...." Fulton Aff. (Feb. 23, 1994), at 7. However, Mr. Fulton did not present any such studies with that affidavit either. Southwestern has provided only a record of system failures associated with loss of generation. Southwestern's past experience only demonstrates that severe unreliability resulted from installing a large generator without the necessary supporting ties, and that when the needed tie from Tuco to Oklaunion was added, the system was made very reliable.¹ This experience in no way demonstrates the need for another tie or a tie upgrade to accommodate a 133 MW transfer. Applicants load flow and stability studies have confirmed that there is sufficient margin in the Southwestern to SPP ties to accommodate their request.

Additionally, Mr. Fulton references early work done by the Applicants as indicating a possible need for the construction of a 345 kV interconnect from PSO's Southwestern Station to Elk City and on to Amarillo at a cost of \$53,760,000 to support the 133 MW transfer. Fulton Aff. (Feb. 23, 1994), at 7. In this early work, Applicants, based on earlier representation made by Southwest assumed an additional tie would be needed for stability, but did not perform stability studies to confirm this. When I was engaged

¹ Interestingly, the SPP Reliability Criteria warn against building large generating plants without sufficient ties to provide reliable backup.

last summer to assist Applicants, one of my first tasks was to guide PSO in making appropriate stability studies to study the need for this interconnect. As explained in my earlier affidavits, this stability work, as well as the associated load flow work, showed no need for a new interconnect. Clark Aff. (Nov. 4, 1993), at 5-6.

Response to Kalt Affidavit

I have also read the affidavit of Professor Joseph P. Kalt and his contentions regarding the ability of CFE to move power between the Juarez area of CFE's Norte region and the Noreste region near the Central Power and Light (CPL) system, and the resulting ability of EPEC and CPL to compete for electricity markets in Mexico. Professor Kalt correctly indicates that CFE has plans to upgrade one transmission line and add another and that these lines will increase the transfer capability between the Noreste and Norte regions. However, these upgrades will not make it possible for CPL to economically reach the Juarez area that EPEC now serves through EPEC's two 115 kV interties to CFE at Juarez, or for EPEC to reach the Laredo or Matamoros area loads to which CPL's system can be connected.

One of my first tasks for CSW was to study the technical feasibility and costs of moving power between CPL and EPEC through the CFE Noreste and Norte regions. There exists a major north-south bottleneck within the Norte region between Chihuahua and Juarez that is well known to CFE. The line upgrade and addition mentioned by Professor Kalt will not relieve this bottleneck.

The bottleneck is associated with transmission lines from Juarez south to Chihuahua. The problem is evident in the one-line which is attached to this affidavit as Exhibit HKC-1. The first

two line sections south of Juarez are very long. They operate at 230 kV and impose voltage and stability limits on flows between Juarez and the remainder of the Norte region to the south. There is another bottleneck south of Camargo. It consists of two very long 230 kV lines.

The most helpful of the lines mentioned by Professor Kalt is a new line from Hercules eastward to Rio Escondido. It is shown as a dashed line in Exhibit HKC-1. This line gives CFE, effectively, three 230 kV lines from Chihuahua to the remainder of the Norte region and the Noreste region. However, because this line connects with the existing Norte north-south system at a point south of Chihuahua, operates at 230 kV, and itself is very long, it does very little to augment CFE's transfer capability north of Chihuahua.

The line upgrade between Monterrey and Torreon Sur, mentioned by Professor Kalt, is a change in the operating voltage of an existing line. The line voltage will be increased from 230 kV to 400 kV. It is the southernmost of the two dashed lines shown Exhibit HKC-1. This line significantly improves Norte to Noreste transfer capability in the south of these regions, but is too far from Chihuahua to measurably reduce the north-south bottleneck.

The capacity of the lines north of Chihuahua is severely limited by voltage and stability. The severely limited capacity of these lines is and will continue to be utilized by CFE, leaving little opportunity for EPEC or CPL to use them to access CFE loads near the other's border.

There are less severe but significant similar problems within the Noreste region. CFE lines from Monterrey to the Reynosa area are about 160 km (100 miles) in length and are not sufficient to

backup generation at Rio Bravo in the summer months when Reynosa, Rio Bravo, and Matamoros loads are high. CFE faces costly solutions to this problem simply to cover its own transfers into the area. Any attempt to ship power from the Juarez area into the Matamoros area during the summer when loads in the area are high would severely compound this problem.

Finally, the distance from CPL's access point at Matamoros and EPEC's access point at Juarez is, effectively, over 1370 km (850 miles) via the CFE transmission system. Most of this transmission operates at a voltage of no more than 230 kV. As a result, losses are very high for any power that might leave CPL and reach Juarez or leave EPEC and reach Matamoros. The losses associated with such transfers would be on the order of 30%. In other words CPL would have to send 100 MW across the border into Mexico to have 70 MW reach Juarez. Such high losses impose a severe economic stumbling block for any potential transactions attempting to reach beyond Juarez in the case of EPEC or beyond Monterrey in the case of CPL.

Harrison K. Clark
Harrison K. Clark

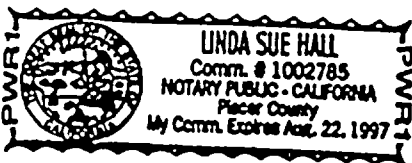
CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Placer } ss.

On 3-18-74 before me, Linda Sue Hall
(date) (Notary)

personally appeared Harrison K. Clark



personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Linda S. Hall
Notary's Signature

CFE SISTEMAS ELECTRICOS AREA NORESTE Y NORTE 1992

DIABLO (EPECO)
AZCARATE (EPECO)

CD. JUAREZ

MOCTEZUMA

QUINAGA

EAGLE PASS (CPL)

LA AMISTAD

PIEDRAS NEGRAS

RIO ESCONDIDO

CUAUHTEMOC

CHIHUAHUA

AVALOS

DELICIAS

FCO. VILLA

CAMARGO

LA PERLA

HERCULES

SANTIAGO

MONCLOVA

LAREDO (CPL)

NUEVO LAREDO

PREBA FALCON (CPL)

FALCON

BROWNSVILLE (CPL)

GOMEZ PALACIO

ANDALUCIA

PAILA

MONTERREY

REYNOSA

RIO BRAVO

MATAMOROS

SANTIAGO PAPANQUIARO

TORREON

CUIDAD LERDO

TORREON SUR

SALTILLO

S. FERNANDO

MONTEMORELOS

C. DEL ORO

S. ROBERTO

CIUDAD VICTORIA

DURANGO

VICENTE GUERRERO

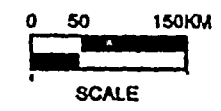
SOMBRETERE

MAZATLAN

SIMBOLOS

- VAPOR CONVENCIONAL
- GEOTERMoeLECTRICA
- HIDROELECTRICA
- CARBOELECTRICA
- NUCLEOELECTRICA

- ENLACES A 400 KV
- - - ENLACES A 230 KV
- ENLACES A 115 KV
- ENLACES A 161,138 Y 69KV



Note: Dashed lines indicate future interregional transmission upgrades.

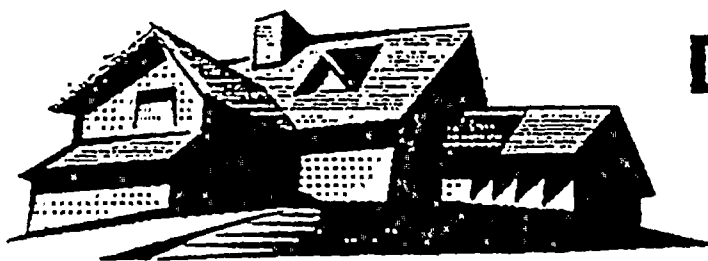
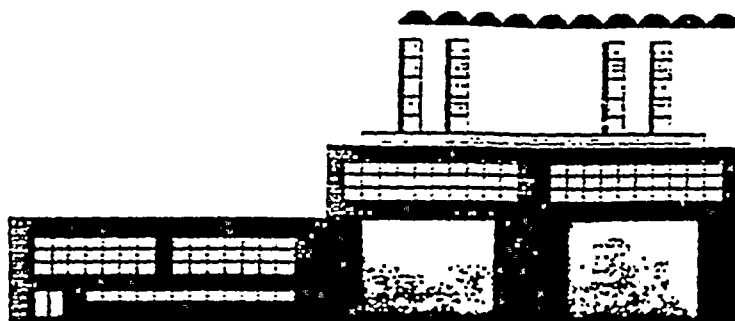
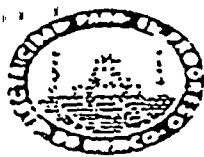
**EL PASO ELECTRIC COMPANY
ESTIMATED CFE NORTH REGION**

	1993	1994	1995	1996	1997	1998
1.0 GENERATION RESOURCES						
1.1 CD. JUAREZ	434	434	434	434	434	434
1.2 F. VILLA	415	415	415	415	415	415
1.3 CHIHUAHUA	64	64	64	64	64	64
1.4 G. PALACIO	209	209	209	209	209	209
1.5 BOQUILLA	24	24	24	24	24	24
1.6 LAGUNA	39	39	39	39	39	39
1.7 LERDO	320	320	320	320	320	320
1.8 MAZATLAN	210	210	210	210	210	210
1.9 PLANNED ADDITIONS:						
1.9.1 SAMALAYUCA 1				173	173	173
1.9.2 SAMALAYUCA 2					173	173
1.9.3 SAMALAYUCA 3						173
1.0 TOTAL GENERATION RESOURCES	1715	1715	1715	1888	2061	2234
2.0 IMPORTS:						
2.1 EL PASO ELECTRIC	150	150	150	150	0	0
2.2 HERCULES TIE *	0	200	200	200	200	200
2.0 TOTAL IMPORTS:	150	350	350	350	200	200
3.0 NET RESOURCES FOR DEMAND	1865	2065	2065	2238	2261	2434
4.0 TOTAL SYSTEM DEMAND	1639	1741	1829	1919	2002	2092
5.0 MARGIN OVER TOTAL DEMAND (MW)	226	324	236	319	259	342
5.1 MARGIN OVER TOTAL DEMAND (PCT)	14%	19%	13%	17%	13%	16%
6.0 LARGEST SINGLE HAZARD **	210	210	210	210	210	210

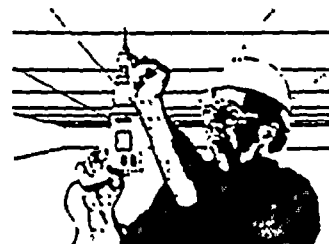
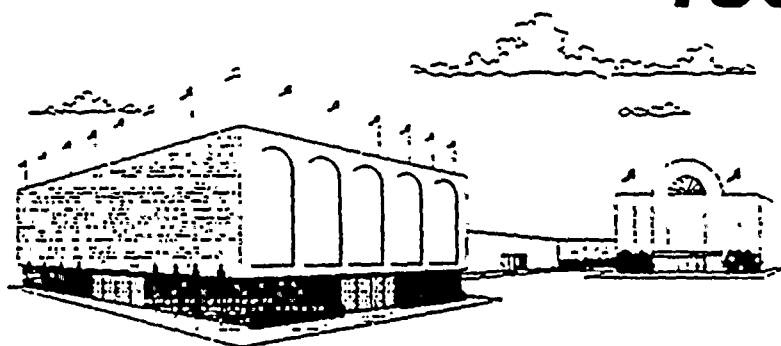
NOTE: * ESTIMATED IMPORT FROM NORESTE REGION.

** BASED ON 210 MW FROM MAZATLAN.

- 1) ELECTRICITY DEMAND FORECASTS TO 2002 APPEAR IN CFE'S "DESARROLLO DEL MERCADO ELECTRICO", PULISHED IN 1993.
- 2) EXISTING AS WELL AS PLANNED RESOURCES INFORMATION WAS ACQUIRED FROM CFE'S NORTH REGION STAFF.



DESARROLLO DEL MERCADO ELECTRICO 1988 - 2002



1988

**COMISION FEDERAL DE ELECTRICIDAD
SUBDIRECCION DE PROGRAMACION**

Gerencia de Programación de Sistemas Eléctricos

SUBDIRECCION DE PROGRAMACION
GERENCIA DE PROGRAMACION DE SISTEMAS ELECTRICOS

ESTUDIO DEL MERCADO ELECTRICO 1988 - 2002
RESUMEN SECTOR ELECTRICO
DEMANDA MAXIMA BRUTA (MW)

Total
Gross
Demand (MW)
By
Area

AREA O SISTEMA	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
01 NOROESTE	2346	2646	2724	2800	3008	3251	3482	3745	4045	4322	4616	4879	5260	5688	6044
INCREMENTO (%)	0.73	12.78	2.87	8.21	8.00	4.94	6.40	8.17	8.01	6.85	6.80	7.86	7.45	6.32	6.26
02 NOROESTE	1383	1472	1574	1626	1848	1704	1780	1892	2000	2110	2231	2381	2529	2690	2829
INCREMENTO (%)	2.07	6.44	6.80	3.30	1.35	3.40	5.05	5.70	5.71	5.50	5.73	6.72	6.22	5.54	5.00
03 NORTE	1220	1398	1511	1489	1533	1639	1741	1829	1919	2002	2092	2190	2290	2395	2508
INCREMENTO (%)	0.83	11.87	10.81	-0.78	2.27	6.81	6.22	5.05	4.82	4.33	4.50	4.68	4.57	4.58	4.63
04 BAJA CALIFORNIA NTE	832	1081	1138	1122	1238	1327	1413	1486	1581	1684	1598	1672	1784	1905	2034
INCREMENTO (%)	8.00	15.86	5.09	-1.23	9.46	6.68	6.48	5.17	6.39	6.51	-6.89	6.63	6.70	6.78	6.77
05 BAJA CALIFORNIA SUR	111	115	127	132	138	145	152	159	167	175	185	195	208	218	230
INCREMENTO (%)	12.12	3.80	10.43	3.94	5.30	4.32	4.83	4.81	5.03	4.79	5.71	5.41	5.84	5.83	5.50
06 CENTRAL - CFE	700	800	905	930	985	1029	1180	1241	1325	1408	1585	1670	1774	1881	1952
INCREMENTO (%)	17.48	13.46	7.50	0.43	2.77	6.83	12.73	6.98	6.77	10.79	7.97	5.38	6.23	4.90	4.80
07 OCCIDENTAL	3171	3447	3992	3850	3842	4182	4439	4887	4974	5256	5556	5911	6244	6934	7045
INCREMENTO (%)	7.18	8.70	7.11	4.28	-0.21	8.33	6.88	5.59	6.12	5.87	5.71	6.38	5.63	6.25	6.20
08 ORIENTAL	3277	3315	3456	3536	3540	3711	4008	4255	4478	4691	4846	5195	5454	5747	6020
INCREMENTO (%)	8.64	1.18	4.31	2.28	0.11	4.83	7.85	6.22	5.18	4.80	5.44	5.03	4.89	5.37	4.75
09 PENINSULAR	429	472	512	542	589	632	692	760	834	904	978	1059	1137	1228	1323
INCREMENTO (%)	9.72	10.02	8.47	5.86	8.87	7.30	9.49	9.83	9.74	8.30	8.18	7.98	7.67	8.00	7.74
10 CENTRAL - CUEC	3783	4009	4185	4283	4337	4498	4853	4800	4999	5135	5308	5488	5673	5851	6087
INCREMENTO (%)	0.29	5.87	3.64	2.60	1.74	3.67	3.48	3.35	3.33	2.34	3.30	3.37	3.37	3.14	3.69
SUBTOTAL	17433	18794	19824	20375	20919	22098	23508	24863	26290	27747	29066	30737	32441	34189	36050
INCREMENTO (%)	4.28	7.80	5.48	2.78	2.67	5.83	6.39	5.78	5.74	5.54	4.75	5.75	5.54	5.41	5.42
11 PEQUEÑOS SISTEMAS	13	13	13	15	14	18	17	17	18	19	20	21	23	24	25
INCREMENTO (%)	8.33	0.00	0.00	15.38	-6.87	14.29	6.25	0.00	5.88	5.58	5.26	5.00	9.52	4.35	4.17
T O T A L	17433	18807	19837	20390	20933	22112	23525	24880	26308	27766	29086	30758	32464	34220	36075
INCREMENTO (%)	4.28	7.88	5.48	2.78	2.88	5.83	6.39	5.78	5.74	5.54	4.75	5.75	5.55	5.41	5.42

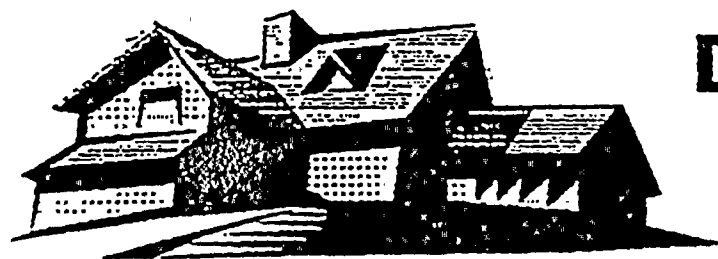
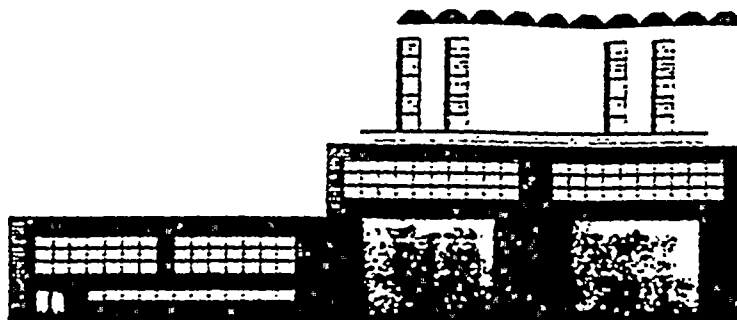
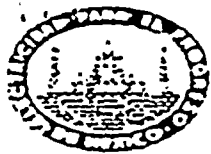
**EL PASO ELECTRIC COMPANY
ESTIMATED CFE NORTHEAST REGION**

	1993	1994	1995	1996	1997	1998
1.0 GENERATION RESOURCES						
1.1 ALTAMIRA	770	770	770	770	770	770
1.2 MONTERREY	590	590	590	590	590	590
1.3 RIO BRAVO	375	375	375	375	375	375
1.4 NAVA	1900	1900	1900	1900	1900	1900
1.5 POSQUERIA	376	376	376	376	376	376
1.6 NUEVO LAREDO	22	22	22	22	22	22
1.7 MUZQUIZ	24	24	24	24	24	24
1.8 S.P. GARCIA	24	24	24	24	24	24
1.9 MONCLOVA	78	78	78	78	78	78
1.10 CD. DEL MAIZ	18	18	18	18	18	18
1.11 NVA. CD. GUERRERO	32	32	32	32	32	32
1.12 ACUNA	66	66	66	66	66	66
1.13 PLANNED ADDITIONS:						
1.13.1 CARBON 3		350	350	350	350	350
1.13.1 CARBON 4			350	350	350	350
1.0 TOTAL GENERATION RESOURCES	4275	4625	4975	4975	4975	4975
2.0 IMPORTS/EXPORTS * :						
2.1 NORTE REGION	(200)	(200)	(200)	(200)	(200)	(200)
2.2 SOUTHERN	600	600	600	600	600	600
2.0 TOTAL IMPORTS:	400	400	400	400	400	400
3.0 NET RESOURCES FOR DEMAND	4675	5025	5375	5375	5375	5375
4.0 TOTAL SYSTEM DEMAND	3251	3462	3745	4045	4322	4616
5.0 MARGIN OVER TOTAL DEMAND (MW)	1424	1563	1630	1330	1053	759
5.1 MARGIN OVER TOTAL DEMAND (PCT)	44%	45%	44%	33%	24%	16%
6.0 LARGEST SINGLE HAZARD **	350	350	350	350	350	350

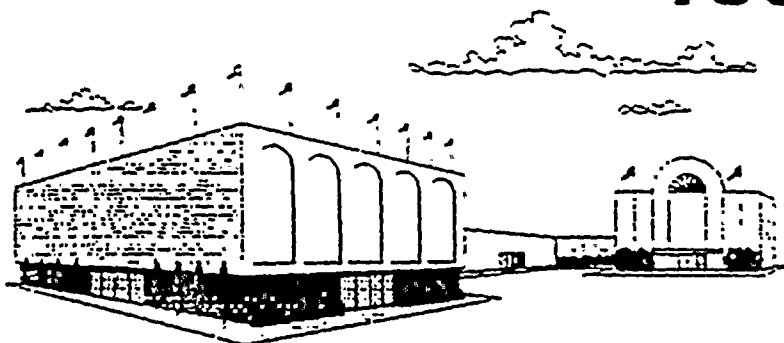
NOTE: * ESTIMATED IMPORTS/EXPORTS.

** CFE LARGEST PLANT OF 350 MW AT CARBON II.

- 1) ELECTRICITY DEMAND FORECASTS TO 2002 APPEAR IN CFE'S "DESARROLLO DEL MERCADO ELECTRICO", PULISHED IN 1993.
- 2) EXISTING AS WELL AS PLANNED RESOURCES INFORMATION WAS ACQUIRED FROM CFE'S NORTHEAST REGION STAFF.



DESARROLLO DEL MERCADO ELECTRICO 1988 - 2002



1993

**COMISION FEDERAL DE ELECTRICIDAD
SUBDIRECCION DE PROGRAMACION
Gerencia de Programación de Sistemas Eléctricos**

