



is a reasonable probability that the substantive matters in issue in this dispute can be resolved and settled, among at least some, and perhaps all of the parties" (Mot. p. 2). The extension of time would further "significantly" the Board's "important interests . . . in moving this matter to an expeditious resolution." (Id.) There appears little doubt that C&SW, HL&P and TU have reached private agreement among themselves to which no other party in Texas was privy.

2. Brownsville opposes the extension of time because of its exclusion from the negotiations (see Attachment A)<sup>\*/</sup>; and also because, based upon what information it has received concerning the negotiations (see, for example, Attachment B)<sup>\*\*/</sup>, (a) it does not believe the negotiations will solve the situation inconsistent with the antitrust laws which exist vis-a-vis CP&L (and others) and Brownsville (which lies at the southernmost Texas-Mexico border, whose sole interconnection to the outside electrical world is with CP&L, and whose sole access to power supplies competitive to CP&L is through some 200 miles of CP&L's transmission system); and (b) it does not believe that the arrangements as proposed for the DC interconnections will be in the larger public interest (and therefore they will extend the situation inconsistent with the antitrust laws) for failure to assure the optimization of the power interconnection, interchange and pooling of electric utility resources throughout the Southwest region of the country for the benefit of all consumers and all smaller utility systems and thus to meet the purposes of Section 202(a) of the Federal Power Act

<sup>\*/</sup> Letter dated March 26, 1980 from George Spiegel to David M. Stahl.

<sup>\*\*/</sup> March 27, 1980 Affidavit of Robert E. Roundtree, Brownsville's General Manager concerning March 25th meeting with M. H. Borchelt, CP&L Executive Vice President and Chief Engineering Officer.

as well as other pertinent standards of that Act, the Atomic Energy Act and the Public Utility Holding Company Act.<sup>\*/</sup>

3. Brownsville would not oppose the time extension were Brownsville to have adequate assurances from CP&L committing CP&L to serious negotiations seeking to alleviate the anticompetitive noose it has placed upon Brownsville. Brownsville would then have some basis for anticipating a possible successful culmination of the settlement negotiations, and therefore some basis not to oppose the extension. The contrary is the fact, and CP&L's anticompetitive activities have intensified so that Brownsville's need for early relief has increased.

4. Brownsville would not oppose the time extension if it were granted forthwith participation in the settlement negotiations with access to all current agreements or draft of agreements so that it could like "certain private parties" participate in "meaningful settlement negotiations" (Mot. p. 1). Brownsville requested, on March 26th,<sup>\*\*/</sup> upon receipt of definitive news concerning the settlement,<sup>\*\*\*/</sup> that it be immediately granted such participation, but has received no affirmative response. It is apparent that there is a strategy abroad to line up in advance enough systems, with enough cross-commitments and bargained exchanges, so as to attempt to steamroller Brownsville and any other systems with the temerity to insist upon their rights.

<sup>\*/</sup> It is our understanding that the instant NRC proceedings cannot and will not be settled separate from a settlement of all related proceedings, i.e.:  
Central and South West Corp., et al., SEC Admin. File No. 3-4951;  
Central Power & Light Co., et al., FERC Docket No. EL79-8;  
West Texas Utilities Co. v. Texas Electric Service Co., 470 F. Supp. 798  
(N.D. Tex. 1979), appeal pending, No. 79-2677 (5th Cir.).

<sup>\*\*/</sup> Attachment A hereto.

<sup>\*\*\*/</sup> Attachment B hereto. There may be a question as to the weight to be given CP&L's Mr. Borchelt's statements. His statement on March 25th that the Federal regulatory agency staffs had been contacted and their reactions had been favorable appears inaccurate. Telephone calls by the undersigned on March 26th to trial counsel elicited lack of any knowledge of the matter; and on March 27th, at the oral argument before the NRC Appeals Board, counsel for Justice and NRC stated a similar lack of knowledge regarding the status of settlement.

5. In further support of points 2(a) and 4 above, it appears that CP&L has, in the course of these private negotiations "among certain private parties" (Mot. p. 1), intensified its anticompetitive actions towards its captive customer Brownsville. It refused to sign an Interconnection Contract which had been fully negotiated, line-by-line, and agreed to by Brownsville's General Manager and CP&L's Vice President for sales, and insisted upon execution of a much more onerous Interconnection Contract with a 10-year take-or-pay provision as a condition of obtaining any power sale commitment and commencement of a badly needed 138 kV interconnection. Further, it proposed an obviously excessive transmission wheeling rate (almost double the rate for the sale of firm capacity both generated and transmitted by CP&L) while it continued to drag its feet on the long promised transmission agreement.<sup>\*/</sup> This, plus other events, left Brownsville with no alternative but to accept CP&L's take-it-or-leave-it proposal by the April 1, 1980 CP&L deadline.

6. In further support of point 2(b) above, it appears that the proposed settlement will not provide for related arrangements among the members of the Texas Interconnected Systems ("TIS") and South Texas Interconnected Systems ("STIS") necessary to provide for coordination and interchange to achieve the potential enormous savings estimated by HL&P's consultants, STagg Systems, Inc. to be available from recommended pooled operations of the systems.<sup>\*\*/</sup> Instead, it will only benefit the corporate interests of "certain private parties" (Mot. p. 1).

<sup>\*/</sup> See also Deposition of S. B. Phillips, Jr., then Board Chairman of C&SW, on February 27 and 28, 1980 at Dallas, Texas; and letter dated February 15, 1980, Borchelt to Roundtree. (Attachment C hereto).

<sup>\*\*/</sup> Two studies prepared by Stagg Systems, Inc. and submitted as evidence before the SEC estimate the savings from joint planning and joint ownership of large generating resources and coordinated dispatch by the member utilities of the Electric Reliability Council of Texas. Generation and Transmission Planning Study of the Electric Reliability Council of Texas, December 1, 1977; Economic Evaluation of Alternative Generation Expansion Plans for Electric Reliability Council of Texas and Southwest Power Pool, Dec. 17, 1979. See also Deposition of Glenn Stagg in the instant proceeding, March 31, 1980, Washington, D. C. (Baker & Botts' office).

7. In further support of Point 2(b) above, it appears that the same rate-making methods for CP&L's proposed (grossly excessive) transmission wheeling rate would be used for determining the cost of wheeling power through intervening systems and across the state border. Thus, in practical effect, CP&L, at least, is refusing to wheel power across state lines for the smaller electric utilities of Texas and adjoining states. No settlement can be successful unless the transmitting utilities tender reasonable joint transmission wheeling rates so that across-the-border power transactions are feasible for the smaller utilities; otherwise, bottleneck control by "certain private parties" of the interstate interconnections amplifies the situation inconsistent with the antitrust laws.

8. In further support of Point 2(b) above, it appears that an essential item of settlement is the exclusion of HL&P and TU from FERC regulatory jurisdiction: in view of the needs to optimize utility resources throughout the Southwest region, it is most dubious that it can be found to be in the public interest that regulation of the total interconnected system should be split between Federal and State regulatory agencies. In addition, it also appears dubious that the limited DC interconnections will provide a basis for the Securities and Exchange Commission to find C&SW to be sufficiently integrated so as to avoid divestiture under the Public Utility Holding Company Act.

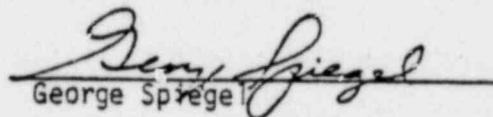
9. Justice delayed is justice denied -- and made more expensive to the point that only the rich and powerful can afford to litigate. The small utilities can obtain relief only if trial courts move matters along to an early conclusion. One time extension leads to another and trial dates are continually put off for one arguably valid reason after another. Settlement is most likely to be achieved if the alternative is an early trial.

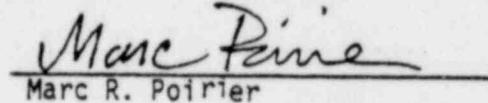
10. If the Licensing Board is otherwise inclined towards granting the extension, the Board should condition the extension upon requiring the three companies forthwith to provide a full disclosure of the status of the negotiations and admit into the negotiating sessions Brownsville and other interested parties.

11. Brownsville requests an early prehearing conference on this matter because of its critical importance.

WHEREFORE, Brownsville submits, for the foregoing reasons, the Board should deny the Joint Motion for extension of time, and, if it determines otherwise, the Board should condition its order upon requiring full participation by all interested parties in all settlement negotiations.

Respectfully submitted,

  
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