

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
HOUSTON LIGHTING & POWER	)	
COMPANY, et al. (South	)	Docket Nos. 50-498A
Texas Project, Units 1	)	50-499A
and 2)	)	
	)	
TEXAS UTILITIES GENERATING	)	
COMPANY, et al. (Comanche	)	Docket Nos. 50-445A
Peak Steam Electric	)	50-446A
Station, Units 1 and 2)	)	

JOINT MOTION OF THE DEPARTMENT OF JUSTICE AND  
THE NUCLEAR REGULATORY COMMISSION STAFF FOR  
MODIFICATION OF BOARD'S ORDER REGARDING PROTECTION  
OF SETTLEMENT DISCUSSIONS AND FOR AN ORDER TO COMPEL  
PRODUCTION OF CERTAIN DOCUMENTS AND TESTIMONY

I.  
INTRODUCTION

On April 16, 1979, the Atomic Safety and Licensing Board ("Board") issued an Order in these above captioned proceedings, which provides in pertinent part that:

"...documents generated by HL&P and other parties solely as a part of negotiations to settle this proceeding [need not be produced]." [Emphasis added] 1/

The Board reaffirmed this Order in its May 7, 1979 "Order Regarding Discovery Motions" and in its subsequent instructions to counsel at the June 1, 1979, Prehearing Conference, which concerned documents produced by Gulf States Utilities. The

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1/ Order Concerning Staff's Motion to Compel Further Answers by Houston Lighting & Power Company, April 16, 1979, at 2.

Department of Justice ("Department") and Nuclear Regulatory Commission Staff ("Staff") [also hereinafter referred to as "Movants"] now contend, however, that the aforementioned Board Orders have been misconstrued and misapplied by counsel for Houston Lighting & Power Company ("HL&P") and Texas Utilities Generating Company ("TUGCO"). Repeated objections by HL&P and TUGCO counsel at various depositions have served to hinder meaningful discovery in these proceedings in a key area of factual inquiry, i.e., whether factual evaluations and/or studies have been made which assess the technical feasibility and/or cost of electrical interconnections between the Texas Interconnected System ("TIS")/Electric Reliability Council of Texas ("ERCOT") and the Southwest Power Pool ("SWPP"). Movants further contend that the existence and substance of such documents could reveal important information about the business justification of Applicants' conduct which is highly relevant to the issues this Board will consider at trial.

Movants, in addition to production of these documents, further wish the right to compel testimony from certain HL&P and TUGCO officers and employees, named herein, as to their knowledge about such documents and whether these documents are being relied on in whole or in part as the basis for their testimony in these proceedings.

II.  
BACKGROUND OF BOARD'S PREVIOUS ORDERS

The scope of discovery at the Nuclear Regulatory Commission is broad. Section 2.740(b)(1) of the Nuclear Regulatory Commission's Rules of Practice states.

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things...It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 10 CFR Section 2.740(b)(1)

As the Board recognized in its oral Order of June 1, 1979, 1/ there is no legally recognized privilege for settlement or compromise negotiations, Oliver v. Committee for the Re-election of the President, 66 F.R.D. 553 (D.D.C. 1975), and therefore no substantive principle which bars discovery of documents created for or used as a basis for settlement negotiations. The Board, however, initially exercised its discretion to allow protection over settlement negotiations in these proceedings to facilitate an agreement among the parties at the early stages of discovery:

"...We made an ad hoc exception, so to speak, when it was presented to us. There were some settlement negotiations going on that could be helpful to us, to

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1/ See Transcript of Prehearing Conference at 356-357.

be of a limited nature, duration and the like. We certainly didn't mean to be creating new or different privileges in discovery. We're getting concerned that we may have inadvertently done so, that is, concerned with the admissibility of evidence from a particular case." 1/

Movants contend that the Board's intent, as demonstrated in its colloquy with TUGCO counsel, was to limit its protection to traditional types of settlement discussions and negotiations not to matters of fact. In the June 1, 1979 Prehearing Conference the Board specifically questioned TUGCO counsel about the types of documents which TUGCO counsel envisioned would be protected from discovery:

CHAIRMAN MILLER: What kinds of documents would you be contemplating? You could use the hypotheticals, but you may not have some in certain areas. Just what are you talking about?

MR. SAMPELS: If I sit down and have a discussion with the NRC Staff and we generated a document that includes certain possible license conditions, we're discussing those license conditions, or possible compromises in that area, I certainly think that falls within the concept of a document prepared solely for the purpose of settlement discussions.

If I do that with the Department of Justice, I think it falls within that category. If I talk with the Department

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1/ Id. at 357. Movants acknowledge that this Board was mindful of 10 C.F.R. §2.759, when it made this ruling which encourages settlement efforts among the parties. Movants support such efforts but believe the Applicants have extended the Board's order beyond its original purpose.

of Justice - which I did, with Ms. Harris - and had a discussion with her with respect to possible areas or approaches to settlement and I put a file memorandum as a result of that discussion, I think that falls within that category. And I should think that a file memorandum that she might prepare -

CHAIRMAN MILLER: I would have no difficulty in considering that such documents, developed solely for negotiating purposes, should be protected under our Order. We decided to establish no blanket universal privilege, but we did shield, at least temporarily, documents generated solely for negotiations subsequent to the entry, I think it was in January 1979, of the District Court decision.

...our two Orders...give a certain measure of protection from produceability; that is to say, discovery of documents produced subsequent to the Texas Court decision and generated solely for the purpose of negotiating matters that came about as a result thereof.

That's as far as we have gone. We could not and have not given the King's X in perpetuity and in all proceedings... [T]hese documents...have the effect, under our Order, of a this time being shielded from discovery. Discovery in this case, as you know, is not infinite. That's as far as we have gone.

...[W]e don't have the power and never purported to shield absolutely nor to immunize forever from any type of inquiry, including possibly our own, if it became material..." [Transcript of June 1, 1979 Pretrial Conference at 366-368.] [Emphasis added]

III.  
DOCUMENTS AND TESTIMONY WITHHELD BY HL&P AND  
TUGCO ON THE BASIS OF SETTLEMENT PRIVILEGE

The Department and Staff seek to obtain any documents which assess the technical feasibility and/or cost of electrical interconnections between TIS/ERCOT and SWPP and to compel testimony about these documents which may relate to part or all of the anticipated testimony of these potential witnesses. The following section details some of the instances during recent depositions where Applicants have withheld documents and testimony on the basis of "settlement privilege" Copies of the relevant pages of these transcripts are attached to this Motion. Movants believe the deposition transcripts demonstrate that Applicants have extended the settlement privilege well beyond the confines of the Board's original intent in order to shield critical factual matters from discovery, particularly by extending that privilege to communication with individuals not party to these proceedings and to potential settlements of other actions in other forums.

A. Depositions of HL&P's Officers and Employees

1. D. Eugene Simmons, HL&P's Vice President for Corporate Planning, and HL&P's designated expert engineering witness, testified that he has met with Alfred Naylor, Manager of Planning for Gulf States Utilities Co. ("GSU") to discuss

a settlement of the current PURPA proceedings. 1/ GSU is a neighboring electric utility which is not currently synchronously connected to TIS/ERCOT, but does operate in interstate commerce as part of SWPP. GSU is not a party to these NRC proceedings. HL&P counsel indicated, however, that Simmons may have reviewed or commented on these recent studies but was instructed not to answer any questions about them. 2/ Simmons also testified that "outside of any settlement studies," no load flow or stability studies relating to interconnection between HL&P and GSU have been performed. 3/

To illustrate how far HL&P has stretched the "settlement privilege", Movants direct the Board to the deposition of Mr. R. T. Sweatman, Director of Engineering and Enforcement for

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1/ Deposition of D. Eugene Simmons ("Simmons II"), October 17, 1979, at 263. Currently Central and Southwest Corporation ("CSW") is seeking to invoke the new authority of the Public Utilities Regulatory Policies Act ("PURPA) at the Federal Energy Regulatory Commission ("FERC") to obtain a non-jurisdictional connection between its Texas and Oklahoma subsidiaries. FERC Docket No. EL-79-8. Counsel for HL&P confirmed, at Mr. Naylor's deposition, that GSU had in fact done load flow and perhaps other studies relating to interconnection. Naylor also confirmed that he had discussed interconnection between GSU and HL&P in the last three years but declined to testify further since he understood the Board's ruling to prohibit this. [Deposition of Alfred E. Naylor, October 11, 1979, at 17-22.] FERC Docket No. EL-79-8 involves a request by CSW for a FERC order mandating non-jurisdictional interconnections between TIS and SWPP.

2/ Id. at 316.

3/ Id. at 317.

the Texas Public Utility Commission. At Mr. Sweatman's deposition counsel for HL&P and Mr. Sweatman's counsel objected to Mr. Sweatman's answering any questions about discussions with Mr. Simmons which concerned communications between HL&P and Gulf States Utilities regarding interconnections between the two systems. 1/ Counsel for HL&P also objected to questions regarding whether any employee of HL&P informed Mr. Sweatman that HL&P was performing stability or load flow studies to assess the effects of synchronous interconnections between TIS and the Southwest Power Pool. 2/ The Department and Staff thus respectfully request the Board to compel answers to these and similar questions. Mr. Simmons has clearly waived any "privilege" regarding settlement when his communications are made to a person who is not a party to the settlement.

2. Kermit Williams, HL&P's Manager of Engineering Design and Development, testified that he knew of load flow and stability studies which related to the synchronous interconnection of TIS with SWPP. Williams was instructed not to produce these documents and was instructed not to answer any further questions on the basis that these studies involved "settlement discussions"

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1/ Deposition of Robert Thomas Sweatman, February 14, 1980, at 29.

2/ Id. at 30.



between Central and Southwest and Gulf States in the FERC/PURPA proceeding. 1/

3. John F. Meyer, Jr., Supervising Engineer at HL&P participated in the preparation of work done for a recent study by Stagg Systems, Inc., HL&P's outside engineering consulting firm. This study apparently examined the interconnections between TIS and SWPP. 2/ Mr. Meyer was also specifically asked to review a CSW proposed interconnection at the FERC/PURPA proceeding at the direction of his superior, Mr. Williams. 3/ Meyer likewise refused to produce these documents or discuss his evaluation of this proposed interconnection studies on the basis of a "settlement" instruction. 4/

B. Deposition of TUGCO's Officers and Employees

1. Gerson Berman, Vice President of Engineering and Purchasing for Texas Power and Light Co., testified that he is a member of a TUGCO group established to study a DC interconnection between TIS and SWPP. 5/ Counsel for TUGCO instructed the witness not to answer questions about the existence of that

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1/ Deposition of Kermit Williams, September 26, 1979 at 33-34, 35-36.

2/ Deposition of J. F. Meyer, Jr., September 13, 1979, at 7, 72-75.

3/ Id. at 82-83.

4/ Id. at 7, 72-73, 82-83, 128, 129.

5/ Deposition of Gerson Berman, December 10, 1979 at 50.

study or the work of that group which apparently is assessing a DC intertie between TIS and SWPP. TUGCO counsel objected on the basis that the answer related "to matters involving settlement or possible settlement of this controversy or controversies directly related to this controversy." [Emphasis added] 1/ Counsel for TUGCO also gave the same instruction when counsel for the Department questioned Mr. Berman about the existence of "any group of individuals which is considering an AC intertie or interties between the Southwest Power Pool and ERCOT." 2/ The same instruction was given to Mr. Berman in response to a question by counsel for the Department as to whether the Texas Utilities Company system ever undertook to determine how many ties would be adequate to interconnect the Southwest Power Pool and TIS. 3/

2. Ted L. Hatcher, Manager of System Engineering for Texas Power and Light Co., testified that he also participated in talks with CSW representatives where interconnections between TIS and SWPP were discussed. TUGCO's counsel instructed Mr. Hatcher not to answer any questions regarding studies, reports, or analyses made regarding these interconnections on

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1/ Id. at 54-55.

2/ Id. at 55-57.

3/ Id. at 88-89.

the basis of "settlement privilege". 1/ While Mr. Hatcher testified that he considered the cost of interconnection between TIS and SWPP to be in excess of \$50 million, he refused to give the basis of this conclusion or further details under a claim of "settlement privilege". 2/

3. Roy R. Parks, Director of System Planning for Texas Utilities Services, Inc., was instructed by TUGCO counsel not to provide his reasons for disagreeing with the conclusion of a 1977 Federal Power Commission report that no additional internal transmission would be required for a TIS/SWPP interconnection. TUGCO counsel further stated that Parks' answer might require the disclosure of work done relating to settlement discussions with CSW. 3/ Later in his deposition Parks also was instructed not to answer questions as to whether his review of an interconnection plan proposed by CSW and the accompanying load flow and transient stability studies indicated that the transmission interconnection proposed between TIS and SWPP were strong or weak. 4/ Parks, however, testified that TUGCO would incur

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1/ Deposition of Ted L. Hatcher, August 14, 1979 at 91-92.

2/ Id., October 17, 1979 at 600-01.

3/ Deposition of Roy R. Parks, July 27, 1979 at 239-40.

4/ Id. at 292.

"large costs" if it were to operate in interstate commerce but he was instructed not to provide the basis for this opinion. 1/

4. Wesley M. Taylor, III, a Vice President of Texas Electric Service Co., testified that he is part of a Texas Utilities group 2/ which is studying the costs of an interstate DC interconnection. 3/ Counsel for TUGCO, however, refused to allow the Department to ascertain the scope or conclusions of these studies, "to the extent that it [the study or studies] involves actual or potential matters relating to the settlement of this controversy." [Emphasis added] 4/ Mr. Taylor also refused to respond to questions as to the existence or content of studies done by TUGCO which relate to the interconnection of the Southwest Power Pool and TIS. 5/

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1/ Id. at 293.

2/ This group consists of Messrs. Hulsey, Berman, Tanner, and Parks. Deposition of Wesley Madison Taylor, III, November 16, 1979 at 97-98.

3/ Id. at 95.

4/ Id. at 93. See generally Id. at 85-106. Counsel for TUGCO also asserted the "settlement privilege at other times where it is not clear that any actual settlement is even ongoing. For example, counsel for TUGCO instructed Mr. Louis F. Fikar, Executive Vice President of Texas Utilities Services, Inc., not to testify regarding DC interconnections "to the extent that there might be any matter which relates to settlement discussions or potential settlement matters of this controversy." Deposition of Louis F. Fikar, November 29, 1979 at 47-49.

5/ Id. at 128-133.

IV.  
ARGUMENT

Applicants have repeatedly argued that a synchronous interstate interconnection between TIS and SWPP will cost the consumers of Texas over \$1 billion over the next 20 years. 1/ Applicants have further contended that synchronous interconnection would seriously degrade the reliability of their operations. Movants anticipate that these two arguments will constitute the major thrust of Applicants' defense in these proceedings to charges of conduct inconsistent with the antitrust laws or their underlying policies. In its most recent Motion to the Board, HL&P stated that "Houston's assertion that interstate interconnection in accordance with CSW's proposal would adversely affect it and its customers is an important justification for its opposition to such interconnection proposals." 2/ However, under the umbrella of the Board's "settlement privilege," Applicants have attempted to prevent discovery of key factual documents which may tend to support or contradict Applicant's business justification

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1/ See, e.g., Houston Lighting & Power Company's Additional Responses to Department of Justice's First Set of Interrogatories and Request for Documents, dated January 16, 1979, Response to Interrogatory Number 6.

2/ Motion of Houston Lighting & Power Company to Compel the Department of Justice to Determine Procedures and to Provide Fuller Responses to Houston's First Set of Interrogatories and Requests for Production of Documents, dated February 12, 1980 at 12.

In United States v. Reserve Mining Co., 412 F. Supp. 705 (D. Minn. 1971), a case concerning violations of pollution control laws, the District Court found that Reserve had falsely represented that its proposed underwater disposal system was a feasible alternative to its then-present disposal system and that it was technologically and economically infeasible for Reserve to dispose of certain waste on land. Since Reserve's documents indicated a contrary conclusion, the company withheld those documents claiming several types of privilege, including a settlement privilege. In rejecting that claim, the Court held:

"Finally, the claim that the documents were part of an offer of compromise is frivolous. Many of the documents were never included in the compromise offer. Accepting this argument would mean that Reserve could shield all documents relating to the economic and technological feasibility of alternative discharge systems because at some latter date they might be used in compromise negotiations. This, obviously, is not the law. The purpose for the privilege surrounding offers of compromise is to encourage free and frank discussion with a view towards settling the dispute. It is not designed to shield otherwise discoverable documents, merely because these documents represent factual matters that might be or are incorporated in a settlement proposal. See, e.g., NLRB v. Gotham Industries, Inc., 406 F.2d 1306 (1st Cir. 1969); United States v. Tuschman, 405 F.2d 688 (6th Cir. 1969); Federal Rules of Evidence, 408. [Emphasis added]. 412 F.Supp. at 711-12.

In Reserve, the Court questioned the ability of Reserve to immunize important factual matters from discovery merely because the documents were or might subsequently be revealed in settlement negotiations. Movants in the instant case seek

production of the factual documents which assess the engineering feasibility and/or cost of potential interconnections between TIS and SWPP, not the details of the posturing of the parties with respect to these factual materials. Applicants have prevented the discovery of the existence, use of, and reliance upon the documents in question. Thus, the Staff and Department have been prevented from even determining whether these documents were in fact presented to or by the party or parties with whom Applicants are or were negotiating, though this is not be controlling as to whether these should be protected. 1/

Any reliance placed by the Applicants on the FERC/PURPA proceeding 2/ as an effort to settle these proceedings is also misplaced. There will be no ultimate determination of interconnection issues at the FERC in the ongoing PURPA proceeding prior to the termination of an extensive study by the parties to that proceeding. D. E. Simmons, HL&P's designated

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1/ See, United States v. Reserve Mining Co., infra, In Re Special Grand Jury, Etc., 433 F.Supp. 1094, 1097, note 2 (N.D. Ill. 1977), Magnaleasing, Inc. v. Stater Island Mall, 76 F.R.D. 559 (S.D.N.Y. 1977) and Fed. R. Evid. 408 ("This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.")

2/ FERC Docket EL-79-8; In Re Application of Central Power & Light Co.

expert witness in the instant case and HL&P's representative on the steering committee for that study group, estimates that the study of an AC/synchronous interconnections between TIS and SWPP will take two to three years. 1/ As resolution of the antitrust issues at the NRC must occur prior to the issuance of the operating licenses 2/ [for Comanche Peak (approximately August, 1981) and South Texas Project (approximately September, 1983)]. It appears unlikely that a study just begun will enable the FERC to finally determine the issues under PURPA in a time frame relevant to the NRC proceedings. Moreover, as this Board recognized in its October 5, 1979 Order Regarding Motions Based Upon Decision of United States District Court, "[I]t cannot be held that proceedings by the FERC based upon [PURPA] in any way supercede" these proceedings. 3/

Furthermore HL&P and TUGCO have not offered any explanation of how production of the documents in question (and testimony relating thereto) could irreparably harm any on-going settlement

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1/ Deposition of D. Eugene Simmons, February 7, 1980 at 35-36.

2/ In Re Toledo Edison Co. (Davis-Besse Nuclear Power Station, Unit 1), ALAB-323, 3 NRC 331, 345-46.

3/ The statutory framework governing these two proceedings is distinctly different. Section 105(c) of the Atomic Energy Act of 1954, as amended, requires the Nuclear Regulatory Commission to remedy a situation inconsistent with the antitrust laws or their underlying policies. PURPA specifically states that "competitive relationships shall not be disturbed." See, Order at 18-19, Public Utilities Regulatory Policies Act of 1978, §203 (adding §211(c)(1)).



discussions. Applicants' burden to show immediate and irreparable harm from disclosure of "settlement" documents may have been less in the spring of 1979 when the Board bestowed upon Applicants a qualified privilege in order to encourage meaningful settlement discussions. Now, however, on the eve of the hearing, there is no indication that any settlement in these proceedings will be consummated. Hence, continued protection would serve no realistic function.

Finally, Applicants' use of the "settlement privilege" has frustrated Movants' efforts to delve into the facts upon which Applicants' experts may base their opinions. For example, TUGCO's designated expert witness, E. D. Scarth, refused to answer whether he was aware of certain crucial engineering studies analyzing the impact of TIS/SWPP interconnections on TUGCO, except outside the context of settlement. 1/ This use of the "settlement privilege" is especially troubling in the depositions of Mr. Scarth and Mr. Simmons since it has prohibited Movants from discovering the facts upon which Applicants' experts may rely, either implicitly or explicitly, as a basis for their testimony at trial.

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1/ Deposition of E. Dale Scarth, February 12, 1980, "Certification of Questions" at 1-8.

V.  
CONCLUSION

For the foregoing reasons, Movants respectfully request this Board to modify its prior Orders relating to the scope of the settlement privilege in the instant proceedings and to compel production of and testimony about any documents which assess the technical feasibility and/or cost of interconnections between TIS and SWPP. Because of the importance of this issue and the limited time remaining to pursue meaningful discovery, Movants further request that responses be hand-delivered to the Board on or before March 3, 1980 and that a conference call be scheduled with the Board on March 4, 1980 to resolve the issues raised by this Motion.

Respectfully submitted,

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Dated: February 28, 1980  
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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
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TEXAS UTILITIES GENERATING	)	Docket Nos. 50-445A
COMPANY (Comanche Peak	)	50-446A
Steam Electric Station,	)	
Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Joint Motion of the Department of Justice and the Nuclear Regulatory Commission Staff for Modification of Board's Order Regarding Protection of Settlement Discussions and for an Order to Compel Production of Certain Documents and Testimony has been made on the following parties listed hereto this 28th day of February, 1980, by depositing copies thereof in the United States mail, first class, postage prepaid.

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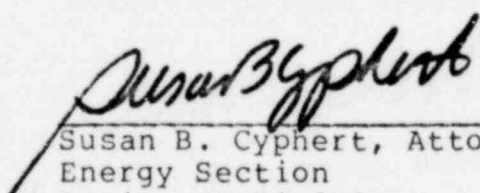
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APPENDIX A

Excerpts from Deposition of D. Eugene Simmons,  
February 7, 1980

1 what he had done, who he had talked to.

2 MR. DOPSOVIC: I thought I was using  
3 Houston Lighting & Power.

4 MR. COPELAND: Well, he's already  
5 testified about what the study groups are doing.

6 Q. Other than those discussions --

7 A. It is my understanding that the working group  
8 of the technical studies steering committee under the  
9 FERC umbrella is going to investigate AC and DC  
10 interconnections and no interconnections and they will  
11 pick the locations that these interconnections will be.

12 Q. Could you give me a brief overview to the best  
13 of your knowledge where the working group is right now in  
14 terms of its progress, if you know?

15 A. They are drafting some recommendations to be  
16 presented to the steering committee and which will be  
17 passed on to FERC preparing a budget and an outline of  
18 the next phase of their work effort.

19 Q. Do you know what is the estimated time that  
20 these studies will be investigated?

21 A. Studies will be investigated?

22 Q. That's a poor phrase. Do you know how long  
23 the working group intends to study the AC and DC  
24 interconnections?

25 A. I have an opinion about it.

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1 Q. What is your opinion?

2 A. I think it will take at least two to three  
3 years, that is, to do the complete AC interconnection.  
4 It would take much less than that to do the DC.

5 Q. Much less, did you say?

6 A. Yes.

7 Q. Now in terms of what the working group is  
8 doing, is that strictly engineering or does that also  
9 include costs?

10 A. I assume that there will be some costs  
11 involved in it. I'm not sure that that's in their scope.  
12 I'm just not sure about it.

13 Q. In terms of the steering committee, how does  
14 that differ from the working group, if you could just  
15 briefly explain that?

16 A. They do the steering.

17 Q. Well, who is on the steering committee?

18 A. There are representatives on the steering  
19 committee from each of the parties in the PERC docket in  
20 this matter.

21 Q. Are you Houston Lighting & Power's  
22 representative on the steering committee?

23 A. I am.

24 Q. If the working committee, if you were not sure  
25 that the working committee was considering the costs of

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Excerpts from Deposition of D. Eugene Simmons,  
October 17, 1979

1 MR. WEISS: He is asking about all of the outside  
2 consultants that have been hired by HL&P.

3 MR. CHANANIA: On the interstate question.

4 THE WITNESS: Mr. Stagg, Herb Woodson, and Abe  
5 Braitman, and the NERA organization. I can't think of any  
6 more.

7 BY MR. CHANANIA:

8 Q And I would also like for you to list for me  
9 in that kind of cursory fashion which studies you personally  
10 have reviewed or commented upon which considered interstate  
11 interconnections or operations by HL&P or by any other TIS  
12 system?

13 MR. BALDWIN: Exclude from that answer, Gene,  
14 studies that have been performed within the ambit of  
15 settlement negotiations. Go ahead and answer the question.

16 THE WITNESS: I reviewed the Stagg study; I  
17 reviewed the PTI study, PTI-1, PTI-2; the Stone and Webster  
18 study --

19 MR. BALDWIN: It is clear, as I understand it,  
20 Mr. Stagg has done some work very recently on the settlement  
21 type thing. But that is not what he is referring to when he  
22 cites the Stagg study.

23 MR. CHANANIA: Yes.

24 BY MR. CHANANIA:

25 Q Would you also have reviewed the 1968 Gulf States-

1 HL&P-TP&L study

2 A I was a part of preparing the joint study by  
3 the three systems involved, and I reviewed the FPC studies  
4 that were related in this area.

5 Q Were those the ones -- what years were they in?

6 A I guess there was one in '67 and '72, and the  
7 recent one here which took two or three years, '76, '77,  
8 and '78.

9 Q As to the 1968 study, did you discuss with Mr.  
10 McReynolds the conclusions which were reached in that study?

11 A That was a long time ago. I don't remember  
12 specifically. I am sure that we had discussions about the  
13 study, and I am sure that I probably had some discussion  
14 with him regarding the conclusions.

15 Q I believe your previous testimony was that no  
16 load flow or stability studies have been conducted since  
17 then which would relate to an AC interconnection between  
18 Gulf States and Houston Lighting and Power. Is that correct?

19 A Outside of any settlement studies, yes.

20 Q Do you think that within the scope the  
21 conclusions of the 1968 study are still valid?

22 A I would have to go back and look at them again.  
23 I can't say offhand.

24 Q In order to study an HL&P-Gulf States AC inter-  
25 connection, would you in your work in the Corporate Planning

1 this proceeding. In Answer 1(f) to the Staff interrogatories,  
2 it states that no express assignment has been given to you  
3 with respect to the scope of your testimony.

4 Since February 19, 1979, have you received any  
5 assignment with respect to the scope of your testimony in  
6 the NRC proceeding?

7 A No.

8 Q Have you had any conversations with Mr. Naylor  
9 of Gulf States Utilities regarding possible interconnections  
10 between Houston Lighting and Power Company and Gulf States  
11 Utilities within the last six months?

12 A I have had some negotiations, some discussions  
13 involved in the settlement proceedings.

14 Q That is the settlement between Gulf States and  
15 Houston Lighting and Power?

16 A The settlement involves Gulf States Utilities.

17 Q And it is a part of the overall settlement of the  
18 dispute between Central & Southwest and Houston Lighting  
19 and Power?

20 A Yes, it is.

21 MR. MILLER: I have no further questions at this  
22 time. We will be certifying to the Board Mr. Weiss'  
23 instructions not to answer the questions, in order to get  
24 a ruling. We will resume on that basis.

25 MR. WEISS: Mr. Chanania?

Excerpts from Deposition of Alfred E. Naylor  
October 11, 1979

1 order at a later date.

2 MR. CLEMENTS: Are you speaking of a proceeding  
3 before the NRC, in which there would be notice and hearing?

4 MR. CARNEY: That 's right.

5 BY MR. BLUME:

6 Q Let's return to you, Mr. Naylor. Can you tell  
7 me what your duties are in your present position with Gulf  
8 States?

9 A My present duties are the responsibilities for  
10 the energy resources of the Company, generation planning,  
11 interconnection planning, negotiation of interconnection  
12 agreements.

13 Q What were your duties as Assistant to the President?

14 A I had the same duties, just a different title.

15 Q And as Superintendant of Planning, what were  
16 your duties?

17 A My duties involved responsibility for  
18 generation planning as well as transmission planning. But  
19 I did not have the responsibility of negotiation on  
20 interconnection agreements.

21 Q Have your responsibilities in generation planning  
22 involved you in creating load projections for Gulf States?

23 A I was responsible for making the load projections  
24 when I was the Supervisor of Planning. But in my present  
25 position, that is now under the responsibility of another

1 department.

2 Q Which department is that?

3 A That is the Transmission Planning Section of our  
4 System Engineering Department.

5 Q Do you presently review projections of energy  
6 costs?

7 A Energy costs?

8 Q Yes, sir.

9 A I make the projections of energy costs, so I  
10 guess I review them also.

11 Q In your present position, do you get involved  
12 with studying the feasibility of upgarding Gulf States'  
13 present transmission?

14 A No.

15 Q Are you involved with the planning of new  
16 transmission facilities?

17 A No.

18 Q Do you participate in economic feasibility  
19 studies for transmission additions?

20 A No.

21 Q Would you just briefly expand a little bit on  
22 what you mean by including in your duties transmission  
23 planning?

24 A Well, I am not doing transmission planning now.  
25 I used to be responsible for transmission planning. At that

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point in time when I was responsible for transmission planning, I was responsible for making engineering studies to determine where the lines were to be, what the voltage was, when they would be built. But I no longer have that responsibility.

Q Are you involved in interconnection planning at the present time?

A Yes.

Q In what way?

A Well, I negotiate with the other companies, if our transmission planning people determine that there is some benefit to the Company to have a new interconnection from a load standpoint.

It is my responsibility to negotiate with the other companies, whoever they may be, about the proposed interconnection, and the voltage and when it is to be installed.

Q In your duties with GSU, have you had any contact with employees of Houston Lighting and Power Company in the past three years?

A Yes.

Q Is that in the context of interconnection negotiations?

A We have not negotiated about interconnections. I have known employees of Houston Lighting and Power for a

1 number of years. We have an interconnection with them, which  
2 is open. We are on certain industry committees together,  
3 and in that area we talk to one another.

4 But I have not had discussions with them about  
5 negotiating on future interconnections.

6 Q Have you had any discussions of any kind with  
7 Houston employees regarding interconnections between Gulf  
8 States and Houston in the past three years?

9 A (Conferring with counsel) The answer to the  
10 questions is yes.

11 Q Can you describe those discussions for me?

12 MR. CLEMENTS: Mr. Naylor indicates to me in  
13 a conversation off the record that these negotiations about  
14 which you are questioning him, or discussions, rather, are  
15 the same, are part of the same discussions that are the  
16 subject of the non-disclosure order we previously discussed  
17 concerning the settlement negotiations as they have been  
18 described between Houston and the other parties in this  
19 action.

20 We don't feel like it would be appropriate for  
21 him to discuss those discussions and thereby reveal the  
22 same material that might be contained in the documents which  
23 have been held non-disclosable.

24 Again, it is simply our wish to abide by what we  
25 understand to be the decision concerning these materials.

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MR. COPELAND: That is exactly the same way we feel with respect to our own witnesses. I think you are entirely correct.

MR. CLEMENTS: As I indicated, only because of this order, as we understand it, do we not wish to discuss the discussions nor do we wish to disclose the documents or documents that have that material as their foundation and thereby reveal the material. We just do not feel like we should be called to task to do so, without being directed to do so by the NRC when there is an outstanding order.

BY MR. BLUME:

Q Mr. Naylor, have you had any discussion with Houston employees regarding interconnections with Houston, not in the context of settlement?

MR. CLEMENTS: Excuse me. I would like to ask you to explain that question in the sense of "not in the context of settlement," as not referring to Gulf States as being a party to a proceeding that is being settled.

MR. COPELAND: I think for the record it is pretty clear that the Central and Southwest proposals necessarily involved an interconnection with Houston Lighting and Power Company and Gulf States, and that Gulf States has not been a party to any of the litigation that has occurred, but they are obviously a necessary entity in resolving the Central and Southwest dispute. That is why they were in

1 the discussions. I think Mr. Clements is quite correct,  
2 and I think the Board has so held, that requiring Gulf States  
3 to disclose whatever occurred in those discussions would be  
4 in effect a breach of the confidentiality agreement  
5 that was entered into, and I think that ought to settle the  
6 matter, and let's get on with it.

7 MR. BLUME: Maybe for clarification you could  
8 tell me if these are documents which were produced regarding  
9 discussions between Houston and Central and then transmitted  
10 to Gulf States?

11 MR. COPELAND: No, I think it was much more than  
12 that. I think Gulf States was involved in doing some load  
13 flow studies, as I understand it, things like that. But I  
14 have never examined the documents. I don't know what --  
15 I shouldn't say that. Maybe I have examined them. But I  
16 can't recall offhand what they are.

17 MR. BLUME: Would these be documents created  
18 since the institution of the District Court litigation?

19 MR. COPELAND: Yes, certainly.

20 MR. BLUME: Thank you.

21 MR. CLEMENTS: Again, Mr. Blume, I want to make  
22 our position clear. We are not trying to be evasive. We  
23 are trying to abide by what we understand to be the  
24 ruling. We feel like any materials which contain that infor-  
25 mation and would reveal it are subject to that order. As

Excerpts from Deposition of Robert Thomas Sweatman,  
February 14, 1980

1 Stuart?

2 MR. FRYER: I suppose so.

3 Q. (BY MR. BLUME): Tom, in your discussions with  
4 Mr. Simmons, has he ever mentioned any discussions  
5 between Houston Lighting and Power and Gulf States  
6 Utilities regarding interconnection between the two?

7 MR. BALDWIN: Just a moment  
8 before you answer, answer that.

9 With your permission, I have  
10 just informed counsel for the A. G.'s Office that there  
11 have been settlement negotiations in this case between  
12 Houston Lighting and Power Company and other members of  
13 the controversy, and of necessity, other utilities  
14 surrounding them or close to them, and that those  
15 conversations have been ruled confidential by the  
16 licensing board. And I will object to your inquiry into  
17 conversations that may have been related to the Public  
18 Utilities Commission concerning the settlement  
19 negotiations.

20 If he can differentiate between  
21 the two, I have no objection to Mr. Sweatman testifying  
22 about nonsettlement negotiations. But I didn't know  
23 whether he was aware of the Board's order or the scope of  
24 it.

25 MR. BLUME: Well, to the extent

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1 that any employee of Houston has informed Mr. Sweatman of  
2 any negotiations ongoing, or the content thereof, the  
3 confidentiality of those discussions has already been  
4 waived, and I would ask that Mr. Sweatman answer my  
5 question.

6 MR. BALDWIN: I would ask Mr.  
7 Sweatman to not answer the question until we get a Board  
8 ruling on that. Because that is absurd. They have  
9 already ruled that conversations between HL&P and Gulf  
10 States Utility concerning settlement may not be breached  
11 in this case. And you are trying to come in the back  
12 door on a matter the Board has ruled on two or three  
13 times.

14 MR. PRYER: I will instruct him  
15 not to answer that, partly on what Mr. Baldwin said, and  
16 partly on the basis of motions before the NRC to observe  
17 confidentiality.

18 MR. BLUME: I would like that  
19 certified.

20 Q. (BY MR. BLUME): Mr. Sweatman, has any  
21 employee of Houston Lighting and Power informed you as to  
22 whether Houston is running a stability study on load flow  
23 studies to assess the effects of synchronous  
24 interconnections between TIS and Southwest Power Pool on  
25 its system?

1 MR. BALDWIN: Same objection.

2 MR. BLUME: I am not asking for  
3 the content of the studies or who was involved. I am  
4 asking whether he has been informed that such studies are  
5 ongoing.

6 MR. BALDWIN: And you know very  
7 well you could not ask the same question of, for example,  
8 an officer of HL&P. The Board has ruled on that.

9 MR. BLUME: To the extent that  
10 somebody from HL&P has informed a nonparty of  
11 negotiations ongoing?

12 MR. BALDWIN: If you take the  
13 position that they are a nonessential party, we can go up  
14 on that. You know where you will end up on that.

15 MR. BLUME: I don't think it is  
16 as clear as you are making out, Mr. Baldwin.

17 MR. BALDWIN: If you don't, you  
18 take it to the Board and you know what will happen.

19 MR. PRYER: I will instruct him  
20 not to answer that, as well.

21 But I would like to state for  
22 the record that Mr. Sweatman is a member of the study  
23 group in the PERC proceeding. Mr. Sweatman, and I think  
24 Mr. Simmons, and I think a representative of several of  
25 the various parties involved. Mr. Sweatman can explain



1 his relationship in that regard better. But it is my  
2 understanding that many of these discussions between Mr.  
3 Sweatman and Mr. Simmons have come up in the course of  
4 that study proceeding, that has been ongoing at FERC in  
5 EL 78-8.

6  
7 MR. BLUME: I would like that  
8 instruction certified, as well.

9 Q. (BY MR. BLUME): Tom, you mentioned you had  
10 met with Dale Scarth regarding the Central and Southwest  
11 controversy?

12 A. Yes. And I might expand on that to say that  
13 when I say I have met with him, I have had discussions  
14 with him, because I have -- I am participating in the  
15 proceeding before the FERC on SWPP with the application.

16 By virtue of the fact I have  
17 attended several of the meetings there and the fact that  
18 an advisory group has been formed, which is basically an  
19 engineer from each party, and we have met subsequent to  
20 the FERC -- or the meetings in Washington at the  
21 buildings of the FERC, we have subsequently met on two  
22 other occasions without counsel, a member from each party,  
23 to discuss the possibility of a joint study of all  
24 parties to look into the feasibilities and -- or the  
25 feasibility of various kinds of interconnections between  
ERCOT and the Southwest Power Pool.

Excerpts from Deposition of Kermit Williams,  
September 26, 1979

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generators in it.

Q Are you thinking of load flow studies done for this contingency?

A Yes.

Q And are you thinking also of stability studies for this contingency?

A Yes.

Q Are there any other studies you're thinking of for loss of largest generators?

A No.

Q Are there different types of stability studies you're thinking of for loss of the largest generator in TIS?

MR. COPELAND: Object to the form. What do you mean, "types", counsel? Do you mean different studies?

MR. BLUME: You're right. Let me try it again.

BY MR. BLUME:

Q Do you know what a transient stability study is?

A Yes. By my definition, yes.

Q Do you know what a dynamic stability study is?

A Yes, in a sense.

Q Do you distinguish between dynamic and transient stability studies?

A Yes.

Q Are you aware of dynamic stability studies for loss of the largest generator in TIS, operating as it does today?

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A No.

Q Are you aware of transient stability studies for the loss of the largest generator operating -- for TIS operating as it does today?

A Yes.

~~Q Have you done any stability studies for loss of one or two of the largest generators in TIS while operating in synchronism with Southwest Power Pool?~~

A No.

~~Q Have you done any load flow studies for loss of one or two of the largest generators in TIS while operating in synchronism with the Southwest Power Pool?~~

A Wait a minute -- repeat the question, please.

(Whereupon, the Reporter read from the record.

THE WITNESS: No.

BY MR. BLUME:

Q Are you aware of any stability studies for loss of one or two of the largest generators in TIS while operating in synchronism with the Southwest Power Pool?

MR. COPELAND: I thought he just answered that question.

MR. BLUME: I asked him if he had done them. I'm asking if he's aware of any such studies.

BY MR. BLUME:

Q Let me ask you this: Are you distinguishing

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1 between reviewing or being aware of such studies, or doing  
2 them yourself?

3 A Well, I was trying to answer your question. I'm  
4 not real sure . . .

5 MR. COPELAND: There were some studies of that  
6 nature in the settlement discussions that we talked about  
7 before, so I'm not going to let him answer any such questions.

8 MR. CHANANIA: So it's clear, is that the  
9 settlement discussions referring to the FERC proceedings?

10 MR. COPELAND: It relates to the studies that were  
11 done in the Central and Southwest Corporation and Gulf States  
12 Utilities.

13 He has another clarification.

14 THE WITNESS: Can I get the question one more  
15 time, please?

16 MR. BLUME: Will you read it, please?

17 (Whereupon, the Reporter read from the record.)

18 THE WITNESS: I'm aware of studies being done. I  
19 have not done these studies myself, and some studies that  
20 were submitted by Central and Southwest. There was some data  
21 that was submitted to the SEC.

( IC fls

(Recess.)

3.

MR. BLUME: We'll be back on the record.

BY MR. BLUME:

Q Mr. Williams, I'm going to give you a document titled, "Preliminary Report 1986, Special Studies, TIS - C&S Conducted by Houston Lighting and Power."

I ask the Reporter to mark this as Williams Exhibit Number One on deposition.

(Whereupon, the document previously referred to as Williams Exhibit One was marked for identification.)

BY MR. BLUME:

Q I'd like you to just look over the first paragraph or any part or all of it.

(Handing document to the witness.)

I'm just going to ask you about the first paragraph at this point, and this is in reference to your answer before that you weren't aware of any load flow studies besides those -- load flow studies regarding outages in TIS while interconnected with Southwest Power Pool, except those load flow studies done in relation to settlement discussions between CSW and Gulf States.

MR. COPELAND: That's not what he said, Counsel.

MR. BLUME: I'm sorry if I mischaracterized it.

wrb/agb2 1

BY MR. BLUME:

2 Q Would you state for me whether there have been  
3 any load flow studies done for those contingencies outside  
4 the scope of settlement discussions?

5 A Should I repeat my answer?

6 I think I made the statement that there were  
7 several studies made in regard to a Central and Southwest  
8 study that was submitted by PTI -- Stone and Webster, that  
9 we had copies of, and I'm aware of those being run and I  
10 looked at them, I've seen those studies.

11 And there were some studies made regarding  
12 reviewing those assumptions or what was said in those studies.  
13 I did not make the studies directly.

14 Q Do you know who made those studies?

15 A I don't know who signed this -- who initialed  
16 or signed on this thing. This was submitted by F.J. Meyers,  
17 I assume that's John Meyers, whose initials are on the thing.  
18 He could have been one of the guys who looked at the thing.

19 Q And for fear of repeating myself once again,  
20 did you tell me that -- what did you tell me regarding  
21 stability studies for outages in TIS while interconnected  
22 with Southwest Power Pool?

23 A I believe your question was one or two machine  
24 losses, and I'm not familiar with those studies that were  
25 run.

Excerpts from Deposition of J. F. Meyer, Jr.  
September 13, 1979



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Q Have any documents been withheld for any reason from among those which you selected from your files in response to the subpoena?

A There are some documents which my lawyer advised me not to supply.

Q And do you know why they were withheld?

MR. COPELAND: I'll answer that question, Mr. Chanania. They were basically three groups of documents, as I recall. We will be providing you a list of those shortly and explaining why they were withheld.

As I recall, one of them related to certain work that Mr. Myer had done in connection with STAGG studies, and I think the department understands our position on that subject.

There were some documents that were done in connection with the settlement discussion with CSW. There's one other group which doesn't come to my mind right off.

MR. CHANANIA: Would they be the microfiche requests?

MR. COPELAND: No, no.

MR. BALDWIN: All that microfiche stuff has been produced. It's being withheld -- really that you haven't seen --

MR. CHANANIA: I understand that. I just want to make sure --

MR. COPELAND: There was one other group that rela

1 A Would you clarify that?

2 Q Did the CSW proposal to FERC that you just  
3 testified that you worked with in the last two years, did  
4 that involve interstate or consider interstate operation of  
5 HL&P?

6 A Yes, CNSW filed that.

7 Q Can you describe what you did in your review of  
8 the CSW proposals and any recommendations that you might  
9 have arisen from your review of the PTI proposal?

10 MR. COPELAND: Excuse me a minute. I need to  
11 consult with this witness.

12 (Discussion off the record.)

13 MR. CHANANIA: If there's some confusion --

14 MR. COPELAND: There is.

15 MR. CHANANIA: -- would you want to leave it  
16 on the record?

17 MR. COPELAND: No. As I understand, from  
18 consulting with Mr. Myer what he means -- I was confused  
19 what he meant by the "FERC proposal," because I don't know  
20 what the FERC proposal is, but as I understand the study  
21 he's talking about now relate to what CSW -- the transmission  
22 lines that they included in their proposals to the FERC  
23 and the work that Mr. Myer is talking about relates to  
24 settlement discussions that we had with CSW, which  
25 necessarily included those transmission lines.

1 BY MR. CHANANIA:

2 Q As relates to the CSW proposal to FERC, in your  
3 review of those, were there any -- did you perform any  
4 review outside the context of any settlement discussions that  
5 would have been conducted with CSW?

6 A Can I get a little clarification on your  
7 question? We only performed review for our management for  
8 the information in the settlement.

9 Q Did you have any recommendations to management  
10 as relates to the CSW proposal to FERC?

11 MR. COPELAND: I instruct the witness not to  
12 answer that question. He has already testified that his  
13 work was done in connection with the settlement discussions  
14 and I think we have gotten a ruling from the Board that  
15 those settlement discussions will be treated confidentially,  
16 and I don't intend to let you inquire behind those  
17 discussions through Mr. Myer.

18 BY MR. CHANANIA:

19 Q The other CSW proposal relating to interstate  
20 may have related to -- strike that.

21 As I understand it, the other review that you've  
22 done relating to CSW proposals and possible interstate  
23 operation by HL&P was in the context of the original PTI  
24 study?

25 A Correct.

1 Q And there are no other proposals from CSW relating  
2 to possible interstate operation of HL&P that you have  
3 performed any work on? They are the only two -- the PTI  
4 and the FERC proposal or studies?

5 A You mentioned the settlement, the Stagg, and the  
6 PTI?

7 Q Right.

8 A Right.

9 (Pause.)

10 MR. CHANANIA: Just in the interest of saving  
11 time, do I understand that you would intend to instruct  
12 the witness not to answer on any question that I would  
13 have as to any work he's done relating to the CSW proposal  
14 which was made to FERC?

15 MR. COPELAND: I obviously haven't done that.  
16 I will let you ask him about it.

17 MR. CHANANIA: No, I think maybe that was the  
18 Stagg --

19 MR. COPELAND: You have not asked the gentleman  
20 questions about the proposal to FERC, and that's why, as  
21 it stands, and what their plans are that are on file with  
22 FERC, and that's why I wanted to get the clarification of  
23 that when he meant the FERC proposals, what he was talking  
24 about were the settlement discussions.

25 And my objection relates only to work he might

1 have done to provide information to people within Houston  
2 Lighting & Power Company who were working on the settlement  
3 with CSW.

4 Now if you want to ask him if they have -- if  
5 Centexl and Southwest have filed any plans with FERC, with  
6 studies and so on, that he has analyzed, then you can ask  
7 him that.

8 MR. CHANANIA: I guess it was my understanding  
9 from what you had told me, that all work that he had done  
10 relating to this CSW filing with FERC in this proposal were  
11 in the context of settlement. So it would be useless --  
12 you know, I can go on and ask questions, but that's what I  
13 was trying to figure out.

14 If everything is in the context of settlement,  
15 then I can go through and ask the questions and have you  
16 instruct him not to answer each one, but I was trying to  
17 cut that short.

18 MR. COPELAND: Well, let me just clarify what  
19 I'm saying.

20 MR. CHANANIA: Please do, because obviously  
21 I'm not --

22 MR. COPELAND: For example, CSW has filed  
23 documents and studies at the SEC showing their specific  
24 transmission plans involving load flow studies or  
25 economic studies, and all that kind of stuff. It's my

1 understanding that has not been done at FERC.

2 And I think that what Mr. Myer meant when he  
3 said "the FERC proposal," he meant the transmission lines  
4 that they showed in their application to FERC, or the  
5 transmission lines that were looked at in terms of the  
6 settlement discussions.

7 And I hope that that clarification -- I think  
8 John agrees with me --

9 THE WITNESS: (Modding in the affirmative.)

10 MR. COPELAND: -- that it will make it clear  
11 what I'm instructing him not to answer. And that is only  
12 with respect to the work that he's done in connection with  
13 the settlement discussions.

14 BY MR. CHANANIA:

15 Q Mr. Myer, have you done any analysis of the  
16 proposal which was submitted to FERC by CSW outside of the  
17 context of settlement discussions that are being or were  
18 being conducted between HL&P and CSW?

19 A What do you mean by "analysis"?

20 Q Have you done any work of any kind outside the  
21 settlement -- strike that.

22 Have you done any work of any kind relating to  
23 the proposal submitted to FERC by CSW which would be  
24 outside the context of the settlement discussions which were  
25 going on between or are going on between CSW and HL&P?

1 Q Did anyone at HL&P ask you to review the  
2 CSW FERC proposal?

3 A The proposal was sent to me with a note of  
4 information, "for your information."

5 Q Who sent it to you?

6 A Mr. Williams.

7 Q Have there been -- when you relayed your views  
8 on the CSW FERC proposal to the people within HL&P that  
9 you've mentioned, was that at a particular meeting? Or was  
10 this a one-on-one situation with these individual people?

11 A I'd probably have to answer that "both."

12 Q Well, let's take the meeting that may have  
13 occurred. Was there a meeting at which you discussed your  
14 views of the CSW FERC proposal where more than two people  
15 were present?

16 A Were there meetings?

17 Q Yes.

18 A Yes.

19 Q And who was there? How many meetings were there?

20 A I couldn't tell you an exact number.

21 Q Can you give me an approximate number?

22 A Again, I don't have an exact number because  
23 there's been numerous meetings within the Engineering  
24 Department, at our management level I just described, with  
25 our legal counsel, in regards to the FERC proposal, the PTI

1 proposal, as well as settlement and Stagg studies.  
2 They're all somewhat intertwined.

3 Q When you expressed your views -- I believe you  
4 said to Mr. McQuistian, and I believe you said to  
5 Mr. Williams -- were there other people present?

6 MR. COPELAND: On what occasion, counsel?

7 MR. CHANANIA: On any occasion that he has  
8 expressed his opinions on.

9 THE WITNESS: I don't really remember. I think  
10 there probably was at least one or two others.

11 BY MR. CHANANIA:

12 Q Can you tell me who they were?

13 A The only fellow I remember precisely is  
14 Mr. Simmons. There could have been Mr. Pond.

15 Q And can you tell me approximately when these  
16 discussions at which you relayed your feelings about the  
17 CSW FERC proposal occurred? I'm trying to get a time frame.  
18 Was it two years ago? Or has it been within the last  
19 six months, for example?

20 A It would be more than a year ago, I think. To  
21 the best of my knowledge, that's about as close as I can get  
22 to it.

23 Q Have you ever seen -- strike that.

24 Do you know if there were any minutes kept of the  
25 meetings at which you expressed your opinion as to the CSW



dsp7

1 MR. CHANANIA: Certainly. Certainly.

2 (Brief recess.)

3 BY MR. CHANANIA:

4 Q Mr. Meyer, I'd like to hand you a document which  
5 I'll tell you now is the subpoena relating to your appearance  
6 here today.

7 (Counsel handing document to witness.)

8 And I believe you said you have seen that subpoena  
9 before.

10 A Correct.

11 Q And you reviewed the -- I'll direct your attention  
12 to the first paragraph and it's entitled "Schedule of  
13 subjects for testimony and production of documents," and ask  
14 you if you've looked at paragraph one before.

15 A Yes.

16 Q Are there any studies in your files which relate  
17 in any way to the possible interstate operations of HL & P  
18 that you have not brought with you today?

19 I'm speaking of studies that you participated in  
20 and worked on that you may have in your files.

21 A Yes.

22 Q There are. You've brought all of them today, is  
23 that --

24 A No, I didn't bring all of them today.

25 Q Is it only the load --

dsp8

1 MR. COPELAND: I thought it was clear that there  
2 were studies related to the settlement and something else,  
3 whatever we said this mornign. I don't think he recollects  
4 anything else.

5 MR. BLUME: We're talking about non-settlement  
6 type documents which relate to engineering or economic  
7 engineering assessments of interstate operations insofar  
8 as Houston or any member of TIS, which are in your file,  
9 whether you have worked on them or not.

10 THE WITNESS: I guess I need to verify; there  
11 are numerous TIS files still in our office. I read the  
12 subpoena to bring the draft reports, et cetera, which tried  
13 to summarize them all.

14 There is also load flow studies; there is  
15 correspondence members. The -- et cetera.

16 MR. COPELAND: Which I think we had made clear had  
17 already been produced to Mr. Zilinsky when -- and whatever  
18 the other guy's name is -- when they came down.

19 THE WITNESS: I thought that all had been produced  
20 I talked to Greg about it all; he's said that it's already  
21 been given once on the public record for the original  
22 request.

23 MR. COPELAND: Do you have some question about  
24 the thing, Mike?

25 MR. CHANANIA: Let's go off the record for a

Excerpts from Deposition of Gerson Berman,  
December 10, 1979.

1 Did you meet with all of those  
2 individuals at one time, or did you meet --

3 A. Would you mind repeating the names of those  
4 individuals?

5 Q. Mr. Wesley Taylor from TESCO; Mr. Hulsey, I  
6 believe from TUSI; Mr. Tanner from D. P. & L. and Mr.  
7 Parks, I believe from TUSI.

8 Now my question was whether or  
9 not you met with them as a group?

10 A. I have met with them as a group.

11 Q. I mean in one physical location at one time,  
12 is that correct, concerning the D C interconnection?

13 MR. SLICKER: The answer is yes.

14 A. Yes.

15 Q. (BY MR. DOPSOVIC): That was basically a  
16 foundation question for this one.

17 Who requested or directed that  
18 you -- and when I say "you", I mean the individuals I  
19 have listed -- should meet as a group?

20 A. Mr. Hulsey.

21 Q. Is Mr. Hulsey the chairman of this group?

22 A. There isn't any group chairman or committee,  
23 per se. Just a request for the individuals to meet.

24 Q. Is anyone coordinating this group of  
25 individuals?

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1 A. What do you mean by the question?

2 MR. SLICKER: Mr. Hulsey is  
3 president of TUSI. He is also president of TU.

4 MR. DOPSOVIC: I understand  
5 that.

6 MR. SLICKER: Well, if  
7 president of the organization asks you to come to a  
8 meeting, you usually come.

9 MR. DOPSOVIC: That was my  
10 first question. But my second --

11 MR. SLICKER: If you got a call  
12 from the White House to come over to a meeting, I suppose  
13 you would probably go there.

14 Q. (BY MR. DOPSOVIC): My second question, Mr.  
15 Berman, was: Was anyone coordinating this group? And  
16 you asked what I meant by "coordinating". Is any one  
17 individual --

18 A. There is not a formal group that has periodic  
19 meetings. There is no such thing as coordinating.

20 Q. When was the committee formed?

21 MR. SLICKER: I object to the  
22 form of the question.

23 Q. (BY MR. DOPSOVIC): When did Mr. Hulsey  
24 request the formation of this grouping?

25 POOR ORIGINAL MR. SLICKER: Object to the

1 characterization of "formation of the grouping". He  
2 asked people to come to a meeting.

3 Q. (BY MR. DOPSOVIC): When did Mr. Hulsey  
4 request this?

5 MR. SLICKER: If you remember.

6 A. I don't remember the exact date.

7 Q. (BY MR. DOPSOVIC): Approximately?

8 A. Several weeks ago. Several months ago.

9 Q. Six months?

10 A. I think it was within six months, but I can't  
11 recall exactly.

12 Q. How many times has this grouping met  
13 concerning the D C interconnection?

14 A. I don't recall it having met again since the  
15 one meeting.

16 Q. Okay. Are there any representatives of  
17 Houston Lighting and Power in this group?

18 A. No.

19 Q. I know this is a sensitive area, and Mr.  
20 Slicker indicated this to me in Mr. Taylor's deposition,  
21 but the question I have, does all the subject matter that  
22 the committee is considering relate to potential  
23 settlement negotiations?

24 MR. SLICKER: I object to the  
25 question. This is not a committee. The individuals went

1 to a meeting one time.

2 And with respect to the scope  
3 of this meeting as it relates to settlement matters, you  
4 are instructed not to get into the substantive matters of  
5 that.

6 Now to the extent that you can  
7 answer his question so that we do not disclose matters  
8 relating to the substance of settlement matters, you may  
9 do so. But if it involves or relates to the possible  
10 settlement of this case or this matter, or any other  
11 litigated matter, then you are instructed not to answer  
12 the question.

13 If you can answer the question,  
14 "did that group of -- when you met one time, did you talk  
15 about matters other than matters relating to settlement",  
16 that is a question you are permitted to answer and go  
17 into if it dealt with matters outside of settlement. If  
18 it dealt with matters inside of settlement, you are not  
19 to go into it.

20 MR. DOPSOVIC: That is my  
21 question. And I respect your sensitivity to that. But  
22 that is my question.

23 Q. (BY MR. DOPSOVIC): answer it?

24 A. What is the question?

25 MR. SLICKER: When you met this

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1 one time when you had this meeting, did you talk about  
2 other matters other than relating to settlement?

3 A. Yes.

4 MR. SLICKER: You did?

5 A. We talked about other matters.

6 (Whereupon, Mr. Slicker  
7 (conferred with the witness.

8 MR. SLICKER: Did all of the  
9 subject matter discussed at that meeting relate to  
10 settlement?

11 A. Yes.

12 MR. SLICKER: I phrased it a  
13 little different.

14 Q. (BY MR. DOPSOVIC): Is the committee engaged  
15 in studies, or will it -- not the committee, but it group  
16 that met, is that group currently engaged in studies or  
17 will it be engaged in studies or assessments of a D C  
18 intertie between ERCOT and the Southwest Power Pool?

19 MR. SLICKER: I object to the  
20 form of the question and instruct the witness not to  
21 answer. It relates to matters which relate to settlement  
22 and the answer to that question involves -- any studies  
23 that relate to a D C tie are going to be shielded from  
24 discovery as long as we are trying to settle this --

25 MR. DOPSOVIC: I respect that.



1 But there are certain legal theories which may be  
2 revealed one day about that.

3 Q. (BY MR. DOPSOVIC): I am not going to ask you  
4 about the studies. I just want to know if they are being  
5 proposed at this point by the group of individuals that  
6 met a few months ago?

7 MR. SLICKER: Instruct the  
8 witness not to answer on the grounds that it involves  
9 matters relating to settlement.

10 MR. DOPSOVIC: I am not asking  
11 about substance, Fred. I am not asking about substance.

12 Q. (BY MR. DOPSOVIC): Mr. Perman?

13 MR. SLICKER: I have instructed  
14 the witness not to answer the question as it relates to  
15 matters involving settlement or possible settlement of  
16 this controversy or controversies directly related to  
17 this controversy.

18 Q. (BY MR. DOPSOVIC): Is there any group of  
19 individuals which is considering an A C intertie or  
20 interties between the Southwest Power Pool and ERCOT?

21 MR. SLICKER: Object to the  
22 form of the question and instruct the witness not to  
23 answer to the extent it involves a disclosure of matters  
24 relating to settlement of this issue. And by "this issue",  
25 so that the record is absolutely clear, I think there

1 should be no doubt, but to make it clear, the issue that  
 2 we are dealing with is the matter of whether the systems  
 3 in ERCOT will be interconnected, synchronously or not  
 4 synchronously, but interconnected in any manner with  
 5 systems outside the ERCOT system.

6 And that involves issues not  
 7 just before the NRC, but it involves issues in other  
 8 proceedings, and there is no way to divorce what might  
 9 arise in the FERC proceeding from what is in this case,  
 10 as I understand the present posture of the case, and as I  
 11 further understand, that matters relating to possible  
 12 settlement with some or all of the parties in this case.

13 MR. DOPSOVIC: I wasn't asking  
 14 about the substance of any group concerning the A C. But  
 15 if you are instructing him not to answer, Fred -- is that  
 16 your position?

17 MR. SLICKER: That is my  
 18 position. It sure is.

19 MR. DOPSOVIC: Okay.

20 MR. SLICKER: And I further  
 21 object because it is my understanding, as you know, Mr.  
 22 Dopsovic, we have had some conversations from time to  
 23 time with the Department of Justice and other Government  
 24 parties in this case, trying to reach some manner in  
 25 which we can resolve this controversy to the satisfaction

1 of the Government, as well as to the parties in this case.  
2 And my understanding of those discussions was and still  
3 is, that those discussions were to be held inviolate and  
4 not disclosed to the other parties in this litigation.

5 The fact that we have met is  
6 even supposed to be held inviolate, and you are inquiring  
7 into matters that may or may not relate to matters that  
8 were discussed in some of those meetings.

9 MR. DOPSOVIC: That is not  
10 quite the same. I am not asking him who you met with. I  
11 am asking whether or not there was any grouping of  
12 individuals which was considering an A-C intertie. That  
13 is all. And if your instruction is for him not to answer,  
14 the record will reflect that.

15 MR. SLICKER: Okay.

16 Q. (BY MR. DOPSOVIC): Mr. Berman, I want to just  
17 reask my question concerning any TU committee or grouping  
18 again.

19 Are you a member of any  
20 committee or group, informal or formal, which consists of  
21 individuals of a TU system, other than those committees  
22 we have discussed or groups we have discussed, and by  
23 "group", I don't mean informal discussions at lunch or  
24 anything like that?

25 A. I can't answer that in the sense of any

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1 interconnection.

2 Q. Why were you more concerned with the  
3 detriments or the disadvantages?

4 A. Because we didn't see any need for the  
5 interconnection.

6 Q. Did you convey -- Well, what were some of the  
7 disadvantages discussed?

8 A. Well, I don't -- I'm just going from memory on  
9 the PTI study, but we felt generally it was very  
10 inadequate.

11 Q. I'm sorry. It was what?

12 A. Inadequate insofar as stating that they could  
13 tie the -- Central-Southwest could tie the Southwest  
14 Power Pool to ERCOT with as few a ties as they were  
15 proposing. We thought they were inadequate.

16 Q. And did the Texas Utilities system ever  
17 undertake to determine how many ties would be adequate to  
18 tie the Southwest Power Pool and ERCOT?

19 MR. SLICKER: I object to the  
20 form of the question, and I instruct the witness not to  
21 answer to the extent that it involves matters that might  
22 relate to settlement discussions that you have had or  
23 that relate to the topic of settlement in connection with  
24 this proceeding.

25 Q. (By Mr. Popovic): Is there -- Can you

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1 respond to my question?

2 A. No.

3 Q. And is that because of your advice of counsel  
4 -- the advice of your counsel?

5 A. Yes.

6 MR. SLICKER: So that you are  
7 clear, my instruction with regard to any of these  
8 settlement matters, if you can answer a question that  
9 does not involve settlement, you should feel free to  
10 answer that.

11 THE WITNESS: I understand.

12 MR. SLICKER: Okay.

13 Q. (By Mr. Topsovic): Did you convey any of  
14 these comments concerning the benefits, if any, and the  
15 disadvantages, if any, to Mr. Scarth after you discussed  
16 these with Mr. Hatcher?

17 A. No. I didn't have any conversation with Mr.  
18 Scarth concerning this.

19 Q. None whatsoever?

20 A. No.

21 Q. Did you ever assist Mr. Scarth in preparing  
22 his testimony at the SEC?

23 A. I did not.

24 Q. Did anyone in your department, that is under  
25 your -- I guess is it correct to say it's a department

Excerpts from Deposition of Ted L. Hatcher,  
August 14, 1979

1 made about 1972. There was one made in 1967 by Mr. Roebuck,  
2 or by Texas Power and Light, Houston Lighting and Power, and  
3 Gulf States Utilities.

4 There was one made, I believe, about 1970, of -- by  
5 the Federal Power Commission. I think most of the studies the  
6 Federal Power Commission has made have to do with intercon-  
7 nection with ERCOT and somebody.

8 There was a study made by PTI, a study made by  
9 Stagg.

10 I think Stone & Webster may have made a study there  
11 also. I don't have access to the report, but I think there  
12 was a study made to that.

13 Q Do you know if there are any studies, reports, or  
14 analyses, in-house, by any member of the Texas Utilities  
15 Company System regarding interconnections between ERCOT and  
16 Southwest Power Pool which has not been produced to the NRC  
17 Staff or Department of Justice?

18 A All that I have have been produced.

19 MR. SAMUELS: I would like to make a comment with  
20 respect to that.

21 Mr. Hatcher has participated in some discussions  
22 directly and indirectly with the Central Southwest Corporation  
23 that I think were described in perhaps fuller detail during  
24 Mr. Parks' deposition, and I will claim the privilege with  
25 respect to any of that work, and I will instruct him not to

1 answer any questions with respect to any work that he did in  
2 that connection.

3 So, I want to make the record clear that we have not  
4 produced any of that material. There was some of that  
5 material in settlement discussion material in Mr. Hatcher's  
6 file. And that was not produced.

7 But our claim only relates to the settlement dis-  
8 cussions that have been ongoing from time to time within CSW.

9 MR. CLARK: Just so the record will be clear, the  
10 privilege you are claiming is the settlement privilege?

11 MR. SAMPLES: That's the settlement privilege, yes.

12 MR. CLARK: Thank you.

13 (Discussion off the record.)  
14  
15  
16  
17  
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22  
23  
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25

end t12



Excerpts from Deposition of Ted L. Hatcher,  
October 17, 1979

1           Q     Mr. Hatcher, in your discussions regarding the  
2 interregional interconnection possibilities, did you consider  
3 at all the possibility of firm sales of TU's excess capacity  
4 outside the state through an interconnection?

5           A     No. Part of the reason for that was that we do  
6 not have a whole lot of excess energy available on the TU  
7 system. We're in a conversion process, and our reserves are  
8 a little high because we have elected to put in new plants,  
9 rather than convert old plants. So from a paper standpoint,  
10 we have excess capacity, but in reality, those units, if  
11 they don't have any fuel, then they can't run.

12                     So most people are interested in capacity along  
13 with some energy, and not just capacity that they get nothing  
14 from.

15           Q     You're not aware of any discussions with any out-  
16 of-state utilities as to their needs for capacity?

17           A     No.

18           Q     Have you ever seen any estimates of the cost that  
19 an interregional interconnection would be?

20           A     The 1967 or 1968 study came up with a cost of  
21 about \$50 million, as I recall.

22           Q     That was the 1968 what?

23           A     Study of interconnection.

24           Q     Do you consider that those costs have increased  
25 since then?

1 A Yes.

2 Q Have you seen any other estimates of cost more  
3 recent than that?

4 A I may have seen some, but I don't recall any figures  
5 as to what they were.

6 Q In your mind right now, you have no estimate of what  
7 that cost would be?

8 A No.

9 Q When you say you may have seen some, do you remem-  
10 ber seeing some that you don't know-- I accept the fact  
11 that you don't recall the estimates, but did you see some  
12 estimates more recent--

13 MR. SLICKER: Excuse me. I object to this question.  
14 This matter is covered by a Board order with respect to  
15 confidentiality, Jim. You know that, and I think your  
16 questions are delving into an area which is--

17 MR. CARNEY: Excuse me. I excluded any discussions  
18 of--the settlement discussions from this question.

19 THE WITNESS: I haven't seen any.

20 BY MR. CARNEY:

21 Q In looking at the question of interregional inter-  
22 connection, did you come to a conclusion as to any parts of  
23 the TU system where transient stability performance might be  
24 improved through an interregional interconnection?

25 MR. SLICKER: I object to the form of the question.

Excerpts from Deposition of Roy R. Parks,  
July 27, 1979

1 Do you agree or disagree with that sentence,  
2 Mr. Parks?

3 A Interconnection of ERCOT with SWPP would  
4 increase, in effect, the size of the system substantially.  
5 It would increase the size of the system probably 20 times,  
6 and a loss of a generator in that system would be a very  
7 small percentage of the total capacity of that system,  
8 and the frequency deviation for that loss would be reduced  
9 substantially, provided there was generation in service  
10 and spinning and responsive to frequency deviation.

11 (Mr. Sampels uttered something inaudible to the  
12 reporter.)

13 MR. CLARK: I'm sorry, Mr. Sampels. I didn't  
14 hear what you said.

15 MR. SAMPELS: I didn't say anything.

16 BY MR. CLARK:

17 Q I'm not sure I followed all that answer, so let  
18 me just try and ask you again, is it possible for you  
19 to agree or disagree with that statement?

20 MR. SAMPELS: The witness has answered the  
21 question, Mr. Clark, to the best of his ability. I thought  
22 it was very responsive and understandable.

23 THE WITNESS: I believe I've answered it.

24 BY MR. CLARK:

25 Q On page 32 of the same document, the following

1 statement is made, and I'd like if you agree or disagree<sup>239</sup>  
2 with it.

3 Quote in quote Inertial close quote load flow  
4 analysis suggests that no additional EHV internal trans-  
5 mission facilities would be required for either ERCOT or  
6 SWPP as a result of interconnecting together, period close  
7 quote.

8 MR. SAMPELS: What's the question?

9 MR. CLARK: As I said before I read the quote,  
10 my question was the same, whether Mr. Parks agreed or  
11 disagreed with that statement.

12 A I didn't, of course, have access to the studies  
13 that were done by Federal Power Commission, that were  
14 background to this report.

15 I disagree with the conclusion, that interconnec-  
16 tion of ERCOT with SWPP would result in no internal  
17 transmission additions. I think that's been a part of  
18 other testimony in this case.

19 BY MR. CLARK:

20 Q Can you state for me your basis for disagreeing  
21 with this statement?

22 MR. SAMPELS: I have no objection to Mr. Parks  
23 answering the question except, however, to the extent  
24 that answering the question would require Mr. Parks to  
25 disclose any of the work that he may have done in connection

1 with settlement discussions with Central Southwest  
2 Corporation, I would instruct him not to answer the  
3 question.

4 A I believe this is a subject that has been the  
5 matter of testimony by Mr. Scarth, and he is the one that  
6 has been designated as our expert in this matter.

7 BY MR. CLARK:

8 Q Well, Mr. Scarth may be the one who's been  
9 designated as your expert in this matter, but my question  
10 is, what is your basis for disagreeing with the statement?

11 MR. SAMPELS: To the extent that it would  
12 require Mr. Parks, in answering that question, to go into  
13 any of the matters that have been covered by the work  
14 he's done in connection with settlement discussions with  
15 CSW, I'll instruct him not to answer the question.

16 If he's made other studies and evaluations other  
17 than relying upon Mr. Scarth in that connection, I have  
18 no objection if he answers it.

19 A I haven't made any other studies.

20 BY MR. CLARK:

21 Q Your knowledge is then limited to the material  
22 that Mr. Sampels is making reference to?

23 A Yes.

24 Q I understand, all right.

25 Also, on page 32 is another sentence I'd like

1 question. Which one? There are probably 30 or 40 of  
2 them so designated, Mr. Miller.

3 MR. MILLER: The witness has answered.

4 BY MR. MILLER:

5 Q Based on your review of materials of Stone and  
6 Webster Engineering Corporation and the load flow and  
7 transient stability studies, do you have any opinion as  
8 to whether the transmission interconnections between the  
9 Southwest Power Pool and ERCOT are strong or weak?

10 MR. MILLER: Let the record reflect that Mr.  
11 Sampels is conferring with the witness.

12 MR. SAMPELS: That's correct, and I'm conferring  
13 with the witness to determine the level of his knowledge  
14 with respect to any, the sort of review that he testified  
15 to and the work he's done in connection with settlement,  
16 which I have the right to do.

17 If the witness can answer that question without  
18 divulging any of the work he's done in connection with  
19 settlement discussions I have no objection; but if he  
20 cannot, I instruct him not to answer the question.

21 A I have no opinion with respect to these ties,  
22 within the limitation posed by counsel.

23 MR. MILLER: Off the record.

24 (Mr. Sampels received a phone call.)

25 MR. MILLER: Back on the record.

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1 BY MR. MILLER:

2 Q Mr. Parks, yesterday in response to a question  
3 by Mr. Clark, I think it was the very end of the day, you  
4 said that it was your opinion that, for Texas Utilities  
5 Companies to operate in interstate commerce interconnected  
6 with Southwest Power Pool would result in large costs.  
7 Do you recall that testimony?

8 A Yes.

9 Q What is the nature of the costs to which you  
10 referred in that answer?

11 MR. SAMPELS: The same instruction will be given  
12 to Mr. Parks with respect to that question.

13 MR. MILLER: Absolutely.

14 A I don't have any comments on that question apart  
15 from settlement discussions.

16 BY MR. MILLER:

17 Q All right, sir, so apart from settlement dis-  
18 cussions you haven't made any calculation of what the  
19 costs or participated in the calculations; is that correct?

20 A Yes.

21 Q Now, I believe you testified also that you are  
22 generally familiar with the circumstances surrounding the  
23 blackout of Manhattan in 1977; is that correct?

24 A Yes; I've read some things about it.

25 Q You became familiar with that in connection with

Excerpts from Deposition of Wesley Madison Taylor, III,  
November 16, 1979

1 A. Yes.

2 Q. Okay. Would you please explain?

3 A. Well, Mr. Manning, in conjunction with  
4 performing system planning studies, discusses and  
5 exchanges fuel cost information with his counterparts in  
6 the other companies in the TU system. And the same can  
7 be said of people in the power department.

8 Q. When you said other -- did you say other  
9 people in the TU system, or did you say other operating  
10 companies? Could you be more specific on which -- I'm a  
11 little tired now, and I apologize. I didn't quite pick  
12 that up. Did you say they were -- Could you just  
13 re-explain your answer concerning Mr. Manning, for  
14 instance? You indicated that he exchanges information  
15 with other people in the TU system, and I thought maybe  
16 you said with other people who were in a similar position  
17 to his. Did you say that?

18 A. I believe I used the word "counterparts".

19 Q. Okay. Do you know who Mr. Manning exchanges  
20 such information with? When you say counterparts in the  
21 TU system, do you have reference to just the operating  
22 companies?

23 A. No.

24 Q. Okay. Beyond the operating companies, who do  
25 you have reference to?

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1 A. People in the service companies.

2 Q. You mean TUSI?

3 A. Yes.

4 Q. And is that all?

5 A. No.

6 Q. Who else?

7 A. TUFCCO, TUGCO.

8 Q. Is that it?

9 A. Yes.

10 Q. Okay. Now, what I was trying to get out of  
11 you, you say the counterparts to Mr. Manning, and I can  
12 understand how he could have a counterpart in DP&L and  
13 TP&L. How does he have a counterpart in TUSI, TUGCO and  
14 TUFCCO if they are not operating companies?

15 A. There are people in those three companies who  
16 perform various duties in conjunction with the system  
17 planning studies that are conducted.

18 Q. Are these committees formalized on paper?

19 A. I don't know what you mean by that.

20 Q. Do you know whether or not an organization  
21 chart exists other than the one that is here that we have  
22 been using the last hour or two?

23 A. Yes, I'm sure that every company has  
24 organization charts.

25 Q. Have you seen any organization chart other

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1 than the one that is before you now which may indicate  
2 the existence or does indicate the existence of various  
3 committees?

4 A. No.

5 Q. Do you know if any such chart exists, to the  
6 best of your knowledge?

7 A. Yes.

8 Q. Do you know where it exists?

9 A. It does not exist.

10 Q. I thought you said it did.

11 A. No, you asked if I knew whether it existed,  
12 and I said, yes, I know that it does not exist.

13 Q. Oh, I'm sorry. Are there any other records  
14 kept of -- which would indicate the existence of these  
15 committees?

16 A. Not to my knowledge.

17 Q. Do you know whether or not these committees  
18 keep their own files?

19 A. I don't know.

20 Q. Could you name some of the other subject  
21 matters on which the committees confer?

22 A. What committees?

23 Q. Any other committees that may exist.

24 A. Within our company?

25 Q. No, within -- well, let's first take within

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1 your direct chain of command.

2 A. As I stated earlier, I don't know. The people  
3 who report to me I'm sure get together periodically, both  
4 as committees and just as informal groups.

5 Q. Well --

6 A. To discuss various matters.

7 Q. Other than informal groups, I was wondering if  
8 there was any formalized or ongoing committees, standing  
9 committees, if you will, who regularly discuss and keep a  
10 watch on developments in any particular area other than  
11 fuel costs.

12 A. Yes, there are such committees.

13 Q. Could you please explain the subject matter  
14 which they are concerned about and the individuals on  
15 those committees, and if those committees have any formal  
16 name or informal name?

17 A. Well, I'm aware that there is in our company a  
18 distribution standards committee. I don't know who all  
19 is on that committee.

20 Q. Okay.

21 A. And I don't know what they do.

22 Q. Does that fall under your direct chain of  
23 command, or the individuals who are on that, do they fall  
24 within your direct chain of command or does that cut  
25 across the vice-presidency levels?

1 A. It cuts across my organization and Mr.  
2 Scarth's.

3 Q. Okay. Do you know what they deal with, I mean  
4 to kind of get an idea what distributions standards -- a  
5 little more specifically.

6 A. They deal with -- to the best of my knowledge  
7 -- I don't know what all they do, but, to the best of my  
8 knowledge, they are responsible for coming up with  
9 standard design criteria for our distribution system.  
10 That is, what size poles, what size wires, how deep we  
11 dig the holes that we put the poles in. All that kind of  
12 stuff.

13 Q. Okay. Any other committees that you are aware  
14 of?

15 A. I'm sure there are other committees.

16 Q. But you can't remember the names?

17 A. Oh, it seems to me that we have some sort of  
18 transportation committee. It's made up of people from  
19 various areas of our company. We currently have formed a  
20 committee that, I believe, is called the disaster  
21 committee.

22 Q. And what does that relate to?

23 A. That relates to an analysis of the events  
24 surrounding the tornado which occurred in Wichita Falls  
25 in April of this year, and evaluating the various aspects

1 of how we operate in a disaster situation.

2 Q. Okay. Going back to the -- Well, are there  
3 any other committees other than those two which you have  
4 ju. -- which you know about? I don't expect you to know  
5 necessarily the formal names of the committees, but just  
6 the subject matters with which any other committees may  
7 deal.

8 A. Yes. There are committees set up to handle  
9 specific questions, and there are lots of those kinds of  
10 committees. They are not perpetual committees. They are  
11 set up to address a specific problem. When that problem  
12 is solved, they are disbanded.

13 Q. Okay.

14 A. I can give you an example.

15 Q. Fine.

16 A. We are currently involved with one of the  
17 universities here in the state in a distribution research  
18 project. There are people from various organizations  
19 involved with that project. It involves the automatic  
20 monitoring of voltages on distribution systems.

21 Q. As opposed to on a transmission system?

22 A. Yes, that's correct.

23 Q. When you mean -- by automatic monitoring of  
24 voltages, does that have any reference to the frequency,  
25 or is that another subject matter? I'm showing ignorance.



1 A. That's another subject matter. I don't know  
2 specifically what that research project involves. I know  
3 that the committee refers to itself as the automated  
4 distribution committee, or something of the sort.

5 Q. Okay. Any other committees that you are aware  
6 of? For instance, getting back to the specific issues,  
7 any other committees on specific issues or questions that  
8 you --

9 A. Well, I'm sure there are, and if you give me  
10 enough time I think I could probably think of some more,  
11 but, you know, they are all insignificant in terms of the  
12 overall operation of our company.

13 Q. That's fine. That's fair. Are there any  
14 specific committees dealing with interstate  
15 interconnections?

16 A. No. Not to my knowledge.

17 Q. Okay. How about with any possible DC  
18 transmission lines?

19 A. Yes.

20 Q. Do you know any of the individuals who are on  
21 the committee?

22 A. Well, I wouldn't call it a committee.

23 Q. Well, group.

24 A. Yes.

25 Q. Okay. Do you know any -- Do you know any of

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1 the individuals who are on that -- or who are involved  
2 with that group?

3 A. Yes.

4 Q. Could you please name them, some of them, to  
5 the best of your knowledge?

6 A. I'm one of them.

7 Q. Does this group -- has this group or will this  
8 group study the costs of the DC transmission line?

9 A. Yes.

10 Q. Could you please explain to me whether or not  
11 a particular transmission line is being considered?

12 A. I don't know.

13 Q. Could you please explain to me what you are  
14 doing in your particular group concerning the DC  
15 transmission line?

16 A. We are studying the cost of DC transmission  
17 facilities.

18 Q. From where to where or -- did you say  
19 transmission facilities?

20 A. DC transmission facilities.

21 Q. In a general way or from a particular point on  
22 -- in the ERCOT system to another point in the ERCOT  
23 system, or could you please be a little more specific in  
24 terms of what you are studying?

25 MR. SLICKER: I object to the

1 form of the question. I also object to the question to  
 2 the extent that it involves actual or potential matters  
 3 relating to the settlement of this controversy, and to  
 4 the extent that it does so I instruct the witness not to  
 5 answer. To the extent that it does not involve matters  
 6 relating to settlement of the issue, my instruction does  
 7 not go -- I do not instruct you not to answer matters  
 8 that relate outside the settlement. But to the extent  
 9 that any answer that you might give in response to this  
 10 question relates to settlement, or settlement discussions  
 11 or possible settlement discussions, I instruct you not to  
 12 answer the question.

13 THE WITNESS: Then I will not  
 14 answer the question.

15 Q. (By Mr. Popovic): Are you saying that  
 16 everything that is being considered by this committee is  
 17 relating to a potential settlement of the -- what I might  
 18 call the controversy in this or any other proceeding  
 19 relating to the interstate issue?

20 A. I'm declining to answer that question on the  
 21 advice of my attorney.

22 Q. I'm not asking you, Mr. Taylor, about the  
 23 particular subject matter that you are discussing. I'm  
 24 asking you whether or not all of the subject matter which  
 25 that committee deals with concerns potential settlement,

1 not whether -- you know, I'm not asking you what those  
 2 things are, in a substantive fashion, just whether or not  
 3 all of the issues which you are dealing with in that  
 4 committee concerns a settlement, potential settlement in  
 5 this or any other proceeding?

6 MR. CATCHER: If there is any  
 7 aspect of his question that relates to matters that are  
 8 outside the settlement parameters, then you may answer  
 9 that to the extent that you are -- that you know, to the  
 10 extent of your knowledge. To the extent that the  
 11 question calls for matters that relate to present or  
 12 potential settlement discussions in this or related cases,  
 13 you should not answer because the board has ruled that  
 14 those matters are not subject to discovery.

15 THE WITNESS: I think all of  
 16 the matters that that group is discussing or studying  
 17 relate or potentially relate to settlement of this  
 18 controversy.

19 Q. (By Mr. Donovick): Okay. When was this group  
 20 formed?

21 A. I don't remember.

22 Q. Approximately.

23 A. A few months ago.

24 Q. How about -- was it six months ago?

25 A. I don't remember.

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1 Q. How was this group formed?  
 2 A. Could you be more specific in your question?  
 3 Q. Did any particular official of the Texas  
 4 Utilities Service Company direct that such a committee be  
 5 formed?

6 A. Yes.

7 Q. All right. Who was that individual?

8 A. Mr. Pulsey.

9 Q. Mr. Pulsey?

10 A. Pulsey, P-u-l-s-e-y.

11 Q. What is Mr. Pulsey's position in the company?

12 A. In what company?

13 Q. I'm sorry. I did -- my question was -- And  
 14 probably maybe you didn't understand me, I asked you did  
 15 a particular individual at TUSCO order that such a --  
 16 that a committee be formed.

17 MR. SLICKER: That was not your  
 18 question. You asked him if a particular individual of  
 19 TUSI --

20 MR. POPSOVIC: For my own --  
 21 could you go back to that?

22 THE REPORTER: (Reading) "Did  
 23 any particular official of the Texas Utilities Service  
 24 Company direct that such a committee be formed?"

25 Q. (By Mr. Popsovic): You indicated Mr. Pulsey;

1 is that correct?  
2 A. Yes.  
3 Q. And what is his position in TMSI?  
4 A. He is the chairman of the board, I think,  
5 although I'm not sure. He may be the president.  
6 Q. Okay. And who did he communicate that  
7 directly to?  
8 A. To me, I guess, and others. I don't remember.  
9 Q. When you say you don't remember, what don't  
10 you remember, whether or not he communicated that to you  
11 directly or whether or not you weren't sure of who else  
12 he communicated a directive to?  
13 A. I don't remember whether he communicated  
14 directly with me or through someone else.  
15 Q. Is Mr. Marquardt knowledgeable of this  
16 committee?  
17 A. I don't know.  
18 Q. Do you know whether or not Mr. Marquardt  
19 directed you to -- did Mr. Marquardt direct you to be a  
20 part of this committee?  
21 A. I don't remember.  
22 Q. But it is possible that Mr. Hulsey  
23 communicated this directive directly to you; is that  
24 correct?  
25 A. Yes, that's possible.

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1 Q. Is it -- why would Mr. Hulsey directly  
2 communicate with you rather than Mr. Marquardt?

3 MR. SLICKER: If you know what  
4 Mr. Hulsey's intentions were or purposes were, you may  
5 answer the question.

6 THE WITNESS: I don't know.

7 Q. (By Mr. Dopsovic): Why would you follow a  
8 directive from the chairman of TUSI rather than -- why  
9 would you follow a directive from a -- an official of  
10 TUSI?

11 A. I'm not sure that -- that Mr. Hulsey's  
12 communication with me, whether it was direct or indirect,  
13 could be properly classified as a directive.

14 Q. Okay. That's fair. What would you classify  
15 it as, then?

16 A. A request.

17 Q. And did you follow his request?

18 A. Yes.

19 Q. What other individuals are on this committee?

20 A. There are a number of people. I don't  
21 remember all of them.

22 Q. Some of them, could you please name names for  
23 me?

24 A. Yes. Mr. Hulsey, Mr. Burman, Mr. Tanner.

25 Q. Mr. Tanner?

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1 A. Mr. Tanner, Mr. Parks.  
2 Q. Mr. Foy Parks?  
3 A. Yes.  
4 Q. And Mr. Tanner is Max Tanner; is that correct?  
5 A. Yes, that's correct.  
6 Q. What is Mr. Burman's first name?  
7 A. Gerson, G-e-r-s-o-n.  
8 Q. And what is Mr. Burman's position in the TI  
9 system?  
10 A. He is a vice-president of Texas Power & Light  
11 Company.  
12 Q. Do you know his official title, other than  
13 that?  
14 A. No.  
15 Q. And Mr. Tanner?  
16 A. Mr. Tanner is a vice-president of Dallas Power  
17 & Light company.  
18 Q. And Mr. Parks?  
19 A. Mr. Parks is the manager of system planning  
20 for Texas Utilities Services.  
21 Q. How many times have the members of this  
22 committee met?  
23 A. I don't remember.  
24 Q. Approximately.  
25 A. Two or three. Or four or more.

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1 Q. Have there been any communications with other  
2 entities -- other electrical entities of the ERCOT system  
3 other than those who consist of TU entities?

4 MR. SLICKER: I object to the  
5 form of the question, and I also instruct the witness not  
6 to answer to the extent that it involves matters relating  
7 to settlement.

8 MR. DOPSOVIC: You will have to  
9 please clarify that for me, Fred. I'm not asking for  
10 substantive.

11 MR. SLICKER: You are asking  
12 who we are trying to settle with.

13 MR. DOPSOVIC: Not necessarily.

14 MR. SLICKER: Well, the answer  
15 to the question relates to whether or not we are trying  
16 to settle this controversy and now, or may relate to that,  
17 and if it does, I think it's beyond the scope of your  
18 proper deposition and covered within the board's order  
19 prohibiting inquiry into matters relating to settlement.

20 MR. DOPSOVIC: Are you aware  
21 that Houston Lighting & Power has--if I may loosely use  
22 the word--proposed a DC interconnection in the PURP  
23 proceeding?

24 MR. SLICKER: I would object to  
25 the question, and I would say it would be grossly loosely,

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1 because Houston Lighting & Power specifically stated that  
2 their indications and discussions with respect to DC  
3 interconnections were specifically not a proposal.

4 MR. DOPSOVIC: Well, with all  
5 respect to Mr. Gordon Coon, and he is a very respected  
6 member of the bar -- of the utility bar, I was at that  
7 meeting, and I was quite confused as to whether or not it  
8 was a proposal or what it was. And his response to that  
9 particular question didn't clarify it, Fred.

10 MR. SLICKER: Well, the  
11 transcript will help. I think he said specifically that  
12 it was not a proposal.

13 MR. DOPSOVIC: I know what he  
14 said, and it didn't make any sense to me in the context  
15 of what they were trying to do in that particular -- Are  
16 you instructing the witness not to answer that question?

17 MR. SLICKER: The question is  
18 objectionable because it assumes facts which are both  
19 incorrect and not a part of this record. He can answer  
20 what his knowledge is with respect to any proposal, if  
21 there is any, of Houston Lighting & Power in the PURFA  
22 proceeding if he has such knowledge. I'm not instructing  
23 him not to answer that question.

24 Q. (By Mr. Dopsovic): Okay. Are you aware that  
25 representatives of Houston Lighting & Power indicated

1 that a DC interconnection would be something that should  
2 be considered in the PURPA proceeding?

3 A. I don't know what the PURPA proceeding is.

4 Q. It's a proceeding before the Federal Energy  
5 Regulatory Commission which was -- whereby a proceeding  
6 was instituted by Central & Southwest Corporation under  
7 the Public Utility Regulatory Policy Act, which is a  
8 PURPA refers to, concerning a potential interconnection  
9 between ERCOT and the Southwest Power Pool, and which  
10 proceedings have been held in the last two or three  
11 months. Are you aware of such a proceeding?

12 A. No.

13 Q. Are there any representatives of Houston  
14 Lighting & Power on this committee?

15 A. On what committee?

16 Q. The committee that you have been describing  
17 the last few minutes?

18 A. I believe I said at the outset that I would  
19 not characterize it as being a committee.

20 Q. As a group, is any representative of Houston  
21 Lighting & Power in this group, which consists of Mr.  
22 Hulse, Mr. Burman, Mr. Tanner, Mr. Parks and yourself?

23 A. No.

24 Q. To the best of your knowledge, do you know  
25 whether or not Houston Lighting & Power has any such

1 committee set up or any such group?

2 A. I don't know.

3 Q. Has a committee communicated at all in any  
4 manner with representatives of Houston Lighting & Power?

5 MR. SLICKER: Object to the  
6 form of the question, instruct the witness not to answer  
7 to the extent that it may involve discussions relating to  
8 settlement.

9 THE WITNESS: In accordance  
10 with the advice of my attorney, I decline to answer that  
11 question.

12 Q. (By Mr. Depsovic): Have any representatives  
13 of this particular group within the TU system which  
14 refers -- which is related to the DC interconnection  
15 -- Let me -- Have any communications been made by  
16 yourself to any representatives of Houston Lighting &  
17 Power concerning a DC interconnection which is the  
18 subject matter of that committee, direct communications  
19 to any representatives of Houston Lighting & Power?

20 MR. SLICKER: To the extent  
21 that any such communications, if they have existed, do  
22 not involve settlement discussions, you may answer. If  
23 any communications have existed and relate to settlement  
24 matters, I'll direct you not to answer -- I instruct you  
25 not to answer the question.

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THE WITNESS: No.

Q. (By Mr. Dopsovic): "No" what? Could you please explain?

A. "No" is the answer to your question.

Q. You will not answer or you do not have any direct contact with representatives of Houston Lighting & Power related to committee's work?

A. In accordance with the instructions given me by Mr. Slicker, the answer to the portion of the question which I will answer is "no".

Q. Okay. I want to be very clear of that. My question said any of the committee's work, so is that -- is your answer still the same?

A. My answer is still "no".

Q. Okay. Did Mr. Pulsey, Mr. Purman, Mr. Tanner or Mr. Parks have any direct communications, to the best of your knowledge, with any representatives of Houston Lighting & Power concerning the subject matter of which the committee is concerned with?

MR. SLICKER: I object to the question. I instruct the witness not to answer any question of this nature with respect to any communications by any member of any committee relating to matters relating to settlement.

MR. DOPSOVIC: I didn't say the

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1 word "settlement".

2 MR. SLICKER: You are probing  
3 into an area which the board has specifically told you is  
4 beyond proper discovery. There is a very sound and good  
5 reason why matters which relate to settlement are not to  
6 be a proper discovery. And I think that your continued  
7 probing in this area is both inappropriate and misplaced.

8 MR. DOROSVIC: To clarify where  
9 my probing is being directed, Fred, I'm not probing about  
10 substantive matters.

11 MR. SLICKER: I'm going to  
12 instruct the witness not to answer any question with  
13 respect to matters relating to the work of this committee  
14 if such matters relate to ongoing or contemplated or  
15 proposed settlement discussions with anybody: with the  
16 Department of Justice or the AEC or with C&E or Houston  
17 Lighting & Power or any other entity, with ACOB.

18 MR. DOROSVIC: I want to ask  
19 for a point of clarification, on the board's order. Did  
20 the board's order state that the names of the parties in  
21 any of the settlement negotiations could not be revealed  
22 or did it go to substantive issues, Fred?

23 MR. SLICKER: My understanding  
24 of the board's order is a very broad umbrella with  
25 respect to matters relating to negotiations and attempts

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1 to resolve this matter. And I understood the board to  
 2 say that that order was very broad because the intent of  
 3 a -- an umbrella prohibiting discovery into matters  
 4 relating to settlement was intended to resolve  
 5 controversies amicably among parties as opposed to  
 6 forcefully through litigated proceedings. And to the  
 7 extent that parties can work their disputes out and  
 8 controversies out, the law encourages that. And to do  
 9 anything which would impede or interfere with or inhibit  
 10 such discussions is inappropriate, and I think the  
 11 board's order was very broad in that regard. And I think  
 12 the questions you are asking are specifically in the area  
 13 which are designed to probe into matters relating to --  
 14 or which would somehow inhibit potential settlement.

15 We are not going to inquire  
 16 into matters that you might -- discussions you might have  
 17 with other parties in this case, and I would hope -- that  
 18 umbrella is supposed to be very broad.

19 Mr. ROSENWIC: Fred, that's  
 20 making a distinction between who is negotiating and what  
 21 they are negotiating about. That's where my line is  
 22 being drawn. And I interpret the board's order not to go  
 23 as far as you interpret it. Do you think it's a good  
 24 time for lunch, Fred?

25 Mr. SLIGO: How much more do

1 you have?

2 MR. ROSSWIC: In light of this  
3 tangent that we got on, I don't think we are going to be  
4 able to finish with Mr. Taylor today. And I think I'm  
5 going to have to ask him to come back sometime in  
6 December when we have the other witnesses here. And you  
7 know --

8 THE WITNESS: Why don't we just  
9 stay and finish it tonight?

10 MR. ROSSWIC: We will go as  
11 far as we will, to 5:00 or 6:00, but I think it would run  
12 considerably past that. Mr. Carney may have --

13 THE WITNESS: I've got nothing  
14 to go tonight. We might as well go on ahead and finish  
15 it.

16 MR. ROSSWIC: To midnight?

17 THE WITNESS: Fine.

18 MR. CARNEY: I don't want to go  
19 to midnight.

20 MR. ROSSWIC: I just thought  
21 I'd give you that forewarning, Fred, and if any kind of  
22 mutual agreement could be reached concerning a  
23 rescheduling at the convenience of Mr. Taylor, I know he  
24 is very busy, and in light of our possibly working with  
25 you the other day concerning your unavailability here

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1 A. Yes.

2 Q. To the best of your ability and -- have you  
3 produced all documents which you have found?

4 A. Yes.

5 Q. Have any documents been withheld on the basis  
6 of any privilege?

7 A. Not to my knowledge.

8 Q. Have any documents been withheld on the basis  
9 of the -- of a possible settlement privilege which we  
10 were discussing before?

11 A. Not to my knowledge.

12 Q. Then I must assure that there are no files,  
13 studies, documents, any kind of paper which was created  
14 or generated or given to the committee which we were  
15 discussing before concerning the DC interconnection.

16 A. Is that a question?

17 Q. Yes, I'm asking you whether or not such  
18 documents, papers, et cetera, et cetera, exist and why  
19 they weren't being produced here today. And then, of  
20 course, the next question would be why -- Well, go ahead.

21 A. Well, first of all, I don't know of any such  
22 documents, if they exist.

23 Q. Have you seen any documents when you were in  
24 your meetings with the committee?

25 A. No.

1 Q. Did you produce any documents, did you write  
2 any notes concerning those things which you may have  
3 discussed?

4 A. Not that I retained.

5 Q. What did you do with them?

6 A. I threw it away.

7 Q. Why did you throw it away?

8 A. Because I didn't need it.

9 Q. Why didn't you need it?

10 A. Because it contained no useful information.

11 Q. Did anyone instruct you to throw it away?

12 A. No.

13 Q. Will you be continuing to throw such documents  
14 away in the future after your committee meetings?

15 A. SLICKER: I object to the  
16 form of the question. Calls for speculation.

17 Q. (By Mr. Dopsovic): Well, I'll ask him the  
18 question again. Do you intend to destroy such documents  
19 after your committee meetings in the future?

20 A. I don't make it a habit to keep anything that  
21 doesn't contain useful information.

22 Q. So are you saying that the discussions  
23 concerning the DC interconnection were not useful?

24 A. I did not say that.

25 Q. Okay. I want to reask the question, then:

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1 You are not withholding any documents on the basis of any  
2 privilege; is that correct?

3 A. Not to my knowledge, I'm not, no.

4 MR. TOPSOVIC: Okay. Could you  
5 give us the documents?

6 (Whereupon, there was a

7 discussion off the record.)

8 Q. (By Mr. Topsovic): You mentioned before that  
9 you were active to some extent in system planning. And  
10 you also indicated that you at times suggested alternate  
11 studies. Could you be more specific in terms of any of  
12 the alternate studies that you may have suggested?

13 A. No.

14 Q. What was your role in the review of the  
15 results of the studies?

16 A. You are speaking of system planning studies?

17 Q. Yes, sir.

18 A. Well, system planning for Texas Electric  
19 Service Company is one of the areas of my responsibility,  
20 and in conjunction with the discharge of that  
21 responsibility I review the system planning studies.

22 Q. Okay. To what extent do you review the system  
23 planning studies?

24 A. To the extent necessary to properly discharge  
25 my responsibility.

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1 into whether or not -- Well, I think I have a right to  
2 know whether or not any such documents will be produced  
3 pursuant to this subpoena.

4 MR. SLICKER: I told you I  
5 would consider your request.

6 MR. BORSOVIC: When will you be  
7 able to notify me?

8 MR. SLICKER: I don't know.

9 MR. BORSOVIC: Do you have an  
10 idea?

11 MR. SLICKER: No.

12 Q. (By Mr. Borsovic): Okay. I'd like it noted  
13 for the record that to the extent that any documents will  
14 be produced, the department will reserve its rights to  
15 ask for Mr. Taylor's deposition to be continued at his  
16 convenience with the least disruption to his business  
17 affairs, and that it is noted that the Department of  
18 Justice feels that the interpretation which the  
19 department has placed on it in the current discussion is  
20 the correct one, and we would appreciate any cooperation  
21 on the part of counsel in this respect.

22 Getting back to your  
23 interaction with Mr. Scarth concerning system planning,  
24 you said that you advise him of the results of certain  
25 studies. Other than the studies which have related to

1 the district court litigation, do you know of any other  
 2 studies which relate to interconnection of the Southwest  
 3 Power Pool and EPSCO, and with respect to any interaction --  
 4 are you aware of any studies which -- having been done by  
 5 people under your command?

6  
 7 Mr. Flicker: To the extent  
 8 that that answer calls for any matter which relates to  
 9 settlement discussions I instruct you not to answer the  
 10 question.

11 Mr. Depsovic: Are you  
 12 instructing him not to answer the fact that studies have  
 13 been done? I'm not asking for production of those  
 14 documents, if you are claiming privilege. I'm asking  
 15 whether or not the studies have been done.

16 Mr. Flicker: My instruction is  
 17 pretty clear. To the extent that in answering that  
 18 question he is requested to or would indicate matters  
 19 which fall within the umbrella of the protection from  
 20 discovery relation to settlement discussions, I instruct  
 21 him not to answer.

22 Mr. Depsovic: In accordance  
 23 with the instructions of Mr. Flicker, my answer to your  
 24 question is "no".

25 Q. (By Mr. Depsovic): Okay. Have any studies  
 been produced -- have any studies been produced by any of

1 the people under your authority which relate to a -- an  
 2 interconnection, AC or DC -- or let's go back, let's just  
 3 say AC at this time, which do not relate to the subject  
 4 matter of any current settlement negotiations which you  
 5 are aware of?

6 A. Yes, would you read that question, please?

7 THE WITNESS: (Reading)

8 "Have any studies been produced -- have any studies been  
 9 produced by any of the people under your authority which  
 10 relate to a -- an interconnection, AC or DC -- or let's  
 11 go back, let's just say AC at this time, which do not  
 12 relate to the subject matter of any current settlement  
 13 negotiations which you are aware of?"

14 THE COUNSEL: I object to the  
 15 question, and to the extent that the question inquires  
 16 into documents which relate to expert advice given to  
 17 counsel, with respect to the C&S controversy, and how  
 18 the proposed interconnections of C&S impact upon and  
 19 relate to the T1 system, those documents also, if done  
 20 pursuant to and directly at the request of counsel, are  
 21 also beyond the scope of proper discovery in this case.  
 22 I might note for the record that we have provided all  
 23 kinds of documents in response to interrogatories in this  
 24 case which relate to matters touching on that subject,  
 25 and I don't know that it's a fair question to ask this

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1 witness to say whether or not documents that might have  
 2 been generated by people under his supervision were  
 3 produced. We have produced several hundred thousand  
 4 pieces of paper for discovery in this case. Put if he  
 5 can answer the question within those guidelines, I think  
 6 you may do so.

7 THE WITNESS: Within those  
 8 guidelines, my answer is "no".

9 MR. DOPSOVIC: Point of  
 10 clarification, Mr. Slicker. Are you claiming the  
 11 attorney/client privilege as to those studies which were  
 12 done for the district court litigation?

13 MR. SLICKER: Work product  
 14 privilege and attorney/client privilege.

15 MR. DOPSOVIC: I'm asking about  
 16 are you claiming the same privilege which the board has  
 17 ruled upon concerning the district court litigation,  
 18 those studies, if any such exist, are you claiming the  
 19 same privilege, even though at this time that litigation  
 20 is over?

21 MR. SLICKER: Well, if the  
 22 board would rule that that litigation is over, and the  
 23 matters relating to that are beyond the scope of this  
 24 proceeding, which they have specifically ruled against in  
 25 denying our request to dismiss certain parties from this

1 litigation, then I might have a different answer. But  
 2 the answer to you is "yes", we are claiming a work  
 3 product and attorney/client privilege with respect to  
 4 advice and studies done for and at the request of counsel  
 5 by non-testifying expert witnesses within the board's  
 6 parameters and within the board's rulings. To the extent  
 7 those matters relate to interconnections proposed from  
 8 time to time by the C&S system, those matters fall  
 9 within the protection of that order. And that order  
 10 means the order with respect to the Houston Lighting &  
 11 Power matter that was litigated, and the order -- I  
 12 can't remember the date of it, it has been within the  
 13 last month.

14 MR. ROSSOVIC: Point of  
 15 clarification, also, Fred, concerning that, your position:  
 16 Are you stating that your privilege applies to all  
 17 documents or those documents which have been requested by  
 18 you specifically?

19 MR. SLICKER: No, those  
 20 documents --

21 MR. ROSSOVIC: From the experts.

22 MR. SLICKER: I'm talking about  
 23 studies made by non-testifying expert witnesses made at  
 24 the request of counsel.

25 MR. ROSSOVIC: Okay.

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1 MR. SLICKER: In connection  
2 with --

3 Q. (By Mr. Popsovic): I understand. Now, let me  
4 ask this question, Mr. Taylor. To the best of your  
5 knowledge, have there been any documents produced  
6 concerning an interconnection, be it AC, DC, at any point  
7 in time which was not requested upon the advice of  
8 counsel, to the best of your knowledge, studies which  
9 were done by people under your authority?

10 MR. SLICKER: By "produced", do  
11 you mean produced today that were contained in his files  
12 and produced in response to the subpoena and the  
13 appearance here, or do you mean produced generally in  
14 connection with this litigation?

15 MR. POPSOVIC: No. I don't  
16 mean produced in connection with this litigation. That's  
17 exactly what I don't want to find out. You have already  
18 made your position clear. I'm saying have any studies  
19 been made which were not done at the advice or  
20 instruction of counsel which are not produced here today  
21 and which could be withheld on the basis of a counsel's  
22 privilege which has been discussed in the last few  
23 minutes?

24 A. I don't know.

25 MR. POPSOVIC: Thank you. Can

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Excerpts from Deposition of Louis F. Fikar,  
November 29, 1979

1 A. I don't know.

2 Q. Who usually schedules such meetings? Who  
3 usually calls --

4 A. If I'm going to be in a meeting, I would.  
5 What other people do, I don't know.

6 Q. When -- in your last discussions with  
7 officials from Houston Lighting and Power Company did any  
8 of those officials or any of the TU officials indicate  
9 that there would be any future meetings concerning this  
10 same subject matter?

11 A. I don't -- I don't know, I can't -- I really  
12 don't know the -- quite what the question means and I  
13 don't -- I haven't set any future meetings myself, so --

14 Q. Okay. In the discussions with officials of  
15 the Houston Lighting and Power Company concerning this  
16 particular subject matter, has there ever been any  
17 discussions concerning the DC interconnection alternative  
18 which was suggested by Houston Lighting and Power Company  
19 at the PURPA (phonetic) proceeding before the Federal  
20 Energy Commission?

21 MR. SLICKER: With respect to  
22 that question, again, I instruct you not to answer the  
23 question to the extent that it calls for a disclosure of  
24 the nature or subject of matters relating to settlement  
25 of this controversy.

1 MR. DOPSOVIC: This is where I  
2 think we're -- you're somewhat contradicting yourself and  
3 maybe you're not, but --

4 MR. SLICKER: If I am --  
5 To the extent that there might be any matters which  
6 relate to settlement discussions or potential settlement  
7 matters of this controversy, I instruct you not to answer  
8 the question. Now the way the question is worded, have  
9 discussions of a DC tie come up in connection with the  
10 ~~Forest Grove sale if I understand the question and to the~~  
11 extent that you can answer that question I think you  
12 ~~should answer it so long as it doesn't violate my~~  
13 instruction with respect to settlement of this  
14 controversy?

15 A. In answer to his question, no.

16 Q. All right. You mean there hasn't been any  
17 discussions?

18 MR. SLICKER: I object to --

19 A. I answered it.

20 Q. I didn't understand the answer, because Mr.  
21 Slicker wanted the colloque in there and I really lost --

22 THE WITNESS: Read it.

23 MR. SLICKER: If you would stay  
24 away from matters relating to settlement or potential  
25 settlement of this controversy and outside of the nature

1 of the matters which the Board has told you are not  
2 proper subject for this discovery proceeding, we would  
3 get along a lot faster.

4 MR. DOPSOVIC: I'm sure.

5 Q. Your discussion --

6 MR. SLICKER: Wait just a  
7 minute, David. There's a real reason for that -- the law  
8 favors parties trying to get together and workout  
9 controversies without having to litigate it and that's a  
10 very strong reason for that. And I think we ought not to  
11 be whimsical about that. That's very important in my  
12 judgment and I think it's important in the Board's  
13 judgment and in the Board's ruling and to the extent that  
14 we can get together with CSW and solved this controversy  
15 I think we ought to be permitted to do so, outside of  
16 discovery or any other parties, you or the NRC or anyone  
17 else in discussions with officials of Houston Lighting  
18 and Power Company concerning their potential purchase of  
19 the Forrest Grove unit.

20 Q. Do you know what kind of fuel they were  
21 considering using if they had -- if they do purchase that  
22 unit?

23 A. Yes. They were considering several varieties  
24 of western coal.

25 Q. And were they considering using lignite?