

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

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In the Matter of: : Prehearing
: Conference

HOUSTON LIGHTING AND POWER COMPANY (SOUTH TEXAS) : Docket Nos.
: 50-498A, 499A

TEXAS UTILITIES GENERATING COMPANY (COMANCHE PEAK) : 50-445A, 446A

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Commission Hearing Room
East-West Towers (Fifth Floor)
4350 East-West Highway
Bethesda, Maryland
June 10, 1980

The above-entitled matter came on for prehearing conference,
pursuant to notice, at 10:00 a.m.

BEFORE:

MARSHALL E. MILLER, CHAIRMAN
SHELDON J. WOLFE
MICHAEL L. GLASER, ESQ.

APPEARANCES:

On behalf of the NRC staff:

FREDRIC D. CHANANIA, ESQ.
MICHAEL B. BLUME, ESQ.

On behalf of Tex-La Electric Cooperative of Texas:

FRED RITTS
WILLIAM H. BURCHETTE, ESQ.
Northcutt and Ely
Watergate 600 Building
Washington, D.C.

On behalf of Central and Southwest Corporation:

DAVID M. STAHL, ESQ.
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Washington, D.C. 20036

1 On behalf of Department of Justice:

2 SUSAN B. CYPHERT, ESQ.
3 Antitrust Division
4 Department of Justice
P.O. Box 14141
Washington, D.C. 20444

5 On behalf of Texas Utilities Generating Company:

6 JOSEPH KNOTTS, ESQ.
7 NICHOLAS S. REYNOLDS, ESQ.
8 Debevoise and Liberman
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Washington, D.C. 20036

9 MERLYN D. SAMPELS, ESQ.
10 Worsham, Forsythe & Sampels
2001 Bryan Tower
11 Suite 2500
Dallas, Texas 75201

12 On behalf of Houston Lighting and Power Company:

13 DOUGLAS GREEN, ESQ.
14 J.A. BOUKNIGHT, JR., ESQ.
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1025 Connecticut Avenue, N.W.
15 Washington, D.C. 20036

16 On behalf of the City of San Antonio:

17 JON C. WOOD, ESQ.
18 Matthews, Nowlin, Macfarlane and Barrett
1500 Alamo National Building
San Antonio, Texas 78205

19 On behalf of the City of Brownsville:

20 GEORGE SPIEGEL, ESQ.
21 Spiegel and McDiarmid
2600 Virginia Avenue, N.W.
22 Washington, D.C. 20037

23 On behalf of the City of Austin:

24 RICHARD C. BALOUGH, ESQ.
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Austin, Texas 78767

1 On behalf of Houston Lighting and Power Company:

2 STEVE HUNSICKER, ESQ.
3 J. MICHAEL BALDWIN, ESQ.
4 J. GREGORY COPELAND, ESQ.
5 Baker & Botts
6 3000 One Shell Plaza
7 Houston, Texas 77002

8 On behalf of Central and Southwest Corporation:

9 MICHAEL I. MILLER, ESQ.
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11 One First National Plaza
12 Chicago, Illinois 60603

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P R O C E E D I N G S

(10:00 a.m.)

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2 CHAIRMAN MILLER: These are the proceedings in NRC
3 Docket Numbers 50-498A, 499A, and 50-445A and 446A, involving
4 the matters known as the South Texas Project and the Comanche
5 Peak proceeding which has been consolidated for disposition of
6 discovery and such proceedings as may be indicated.

7 This prehearing conference is being held on the day
8 following submission of written reports, status reports, concern-
9 ing settlement negotiations which all parties and counsel have
10 filed as of yesterday.

11 We will ask for the benefit of our record and reporter
12 if counsel will identify themselves, their associates and parties
13 for the record, please.

14 We will start over here at this table.

15 MR. CHANANIA: My name is Fred Chanania. I represent
16 the NRC staff. With me this morning at counsel's table is
17 Michael Blume, also of the NRC staff.

18 MR. WOOD: My name is Jon Wood. I represent the city
19 of San Antonio.

20 MR. BALOUGH: Good morning. Richard Balough represent-
21 ing the city of Austin.

22 MS. CYPHERT: Good morning. Susan Braden Cyphert. I
23 represent the Department of Justice.

24 MR. SAMPELS: I am M.D. Sampels representing Texas
25 Utilities. With me is Joe Knotts and Robert Woolridge.

1 MR. COPELAND: Greg Copeland for Houston Light and
2 Power Company. With me this morning is Lon Bauknight and Doug Green
3 of Lowenstein, Newman, Reis, Axelrad and Toll in Washington, and
4 Steve Hunsicker and Mike Baldwin of Baker & Botts.

5 MR. MILLER: Good morning. My name is Michael Miller
6 representing the Central and Southwest and its subsidiary operating
7 companies. With me is David Stahl of our firm.

8 MR. JOHN: I'm Douglas F. John representing South
9 Texas Electric Cooperative and Medina Electric Cooperative.

10 MR. BURCHETTE: Good morning. I'm William H. Burchette
11 representing Tex-La Electric Cooperative of Texas. With me is
12 Mr. Fred Ritts.

13 CHAIRMAN MILLER: Anyone else, counsel, parties, who
14 hasn't made his appearance for the record?

15 We are pleased with the status reports which we have
16 received. You have done a good deal of work and effort, a good
17 deal of success on the part of counsel and parties which we
18 commend.

19 For the record perhaps it would be well to have you
20 summarize, at any rate, the status of these matters as they appear
21 to you and to your colleagues. First of all, I suppose as a
22 group it might be good if you took the utilities comprising the
23 applicants or licensees in the two proceedings, and then we will
24 get into intervenors and winding up perhaps with staff and the
25 Department of Justice who have varying points of view.

Who wishes to go first?

(Laughter.)

We understand something was signed in Chicago yesterday.
We have copies this morning.

MR. SAMPELS: I am the oldest.

(Laughter.)

CHAIRMAN MILLER: Also the prettiest.

(Laughter.)

MR. SAMPELS: The same thing, of course, my colleague
on my right.

CHAIRMAN MILLER: The same thing, of course, always of
your colleague on your right.

(Laughter.)

MR. SAMPELS: Mr. Chairman, as indicated in the status
reports, the system, the Central-Southwest Corporation and Houston
Lighting and Power did reach an agreement which was executed in
Chicago yesterday, which is designed to form the basis for a
complete settlement of the so-called interconnection controversy,
of course subject to any conditions that must be approved by this
Board. If the settlement is implemented it will not only resolve
the issues in the Comanche Peak and South Texas licensing proceed-
ing, but also issues that exist in numerous forms, from New Orleans,
I guess, on the south, to Washington on the north.

I think that controversy, if implemented, would do much
more than settle litigation. It would result in the construction
of interregional ties between the Southwest power pool and ERCOT.

1 And to the extent that there are benefits to be derived from
2 interconnection -- and certainly parties in this proceeding and
3 others feel very strongly that there are -- those benefits will
4 become available to the public at a much earlier date than could
5 otherwise be possible if this and other proceedings were fully
6 litigated.

7 We think that forms an important part of the settlement
8 efforts that the parties have indicated in the last six days.
9 Furthermore, as reported to the Board, I think, in the first
10 status report, we believe that we have reached an understanding
11 with the staff of the Nuclear Regulatory Commission which if
12 approved by this Board would also solve one of the significant
13 areas of dispute that has existed; and that is, the conduct of
14 the Texas utility company system and Houston Lighting and Power
15 with respect to proposed interconnections that may be made by
16 Central Southwest Corporation in the near future, or any inter-
17 connections which may be proposed or desired by other parties in
18 the future.

19 We think that was a major accomplishment, and we believe
20 that when other issues that exist between the parties are settled,
21 if they can be settled, and a proposed settlement submitted to
22 this Board, it will also find that a good and solid basis exists
23 for settlement, and one which we believe this Board will be able
24 to approve when submitted to it.

25 Obviously we cannot now submit a proposed settlement to

1 the Board because all issues have not been resolved, the most recent
2 one being that the system has had with parties to this proceeding.
3 Yesterday we spent a good part of the day with staff of the NRC
4 trying to address other issues which have not yet been resolved.

5 We have received a suggested form of license conditions
6 for the project, which if approved by this Board will form a
7 complete basis for settlement of the controversy with the staff.
8 I think there is substantial agreement with respect to all of the
9 proposed license conditions other than what I will call a few.
10 Whether that is two issues or three issues I think it is not
11 particularly important to give a number to them now, but while we
12 still have important differences with the staff, I think even
13 yesterday we made substantial progress. And I think given addi-
14 tional time and a good faith effort on our part and on the staff's
15 that those issues can be resolved.

16 One thing we have not been able to accomplish simply
17 because of a lack of adequate time in the past thirty days is
18 further significant discussions with the Department of Justice.
19 A lack of those discussions with the Department, there is no
20 indication on our part we cannot reach a settlement. It has
21 simply been the limited amount of time available and the efforts
22 that have been made. And the staff with the Central-Southwest
23 system has not permitted us to readdress the several issues that
24 exist within ourselves and the Department.

25 However, as indicated, as late as this morning when I

1 talked briefly to Bob Fabricant that they certainly are willing
2 to continue discussions and to address all issues that exist
3 between us in this proceeding.

4 We believe that if further time is allowed by this Board
5 that significant additional progress can be made, and hopefully
6 complete disposition of the issues that exist between ourselves
7 and the Department can be made.

8 The issues there again are also difficult, but I think
9 with a good faith approach by all parties involved, we will be
10 able to bring to this Board further reports noting either a
11 complete or certainly materially partial settlement of the
12 issues.

13 Thank you.

14 CHAIRMAN MILLER: Let me inquire, what recommendations
15 do you make to the Board as to the time of any stay or setting
16 of any dates for subsequent reports or developments? Also, to
17 indicate to us if you could without going into the substance of
18 anything the nature of whatever issues there are that you will
19 be approaching and you intend to resolve, in addition to those
20 you've already told us the status of.

21 MR. SAMPELS: The recommendation that Texas Utility
22 Company system makes to the Board is that we have a further
23 extension of proceedings for thirty days to permit the parties
24 to have further discussions, hopefully resulting within that
25 thirty day period with a complete resolution, or if not a complete

1 resolution, certainly a partial resolution which will permit the
2 issues from this Board to be narrowed in a pretrial proceeding.

3 I cannot make a firmer statement that thirty days will
4 result in a complete settlement, but I think that measuring the
5 progress of the past, a significant progress and hopefully a
6 complete progress will be made in that period.

7 The issues that seem to be separating ourselves between
8 ourselves and the staff of the NRC at the moment, Mr. Chairman,
9 primarily deal with the utilization of the proposed interconnections
10 between ERCOT and the Southwest Conference. Obviously, an
11 interconnection is of relatively little value unless people can
12 get to the interconnection and get across the interconnection.
13 So the staff has raised that as an issue in its behalf, and
14 dealing primarily with the economics of movement of power to and
15 from and over the interconnection, one of the major things that
16 we believe we have accomplished in the settlement agreement with
17 Central-Southwest system is to agree on a set of principles that
18 would be applicable for the movement of power to and from and
19 over the interconnections.

20 This set of principles we believe conforms to existing
21 law as developed by the FERC. We do not suggest that is -- we
22 are not submitting that to this Board at this time, but we do
23 believe that based upon our research that we have found an
24 important set of principles that should provide the basis for
25 access to the D.C. ties by anyone who wishes to use them at rates

1 to be imposed by the regulatory commissions having jurisdictions
2 over those rates.

3 The question, I suppose, exists between ourselves and
4 the staff as to whether that set of principles is something that
5 they are or will become satisfied with and in terms of proposed
6 licensing conditions in this proceeding.

7 I really can't do much more than identify that as an
8 area that we are talking, and we have not yet reached an agreement
9 with respect to that.

10 The other kinds of things I think are really details
11 that are simply requiring time for engineers to understand -- both
12 the engineers within our company and the engineers within the
13 staff of the various commissions. For example, the staff believes,
14 and the staff of the FERC believes also, that if a person is
15 wheeling firm power to and from over the connections and the connec-
16 tion becomes disabled because of some catastrophe, lightning, or
17 is put out of service, or is in for maintenance or something,
18 the person who is moving power over the connection should have
19 access to backup power within the state of Texas.

20 We think that we have proposed a method of providing
21 backup power to such persons to the staff of the FERC and have
22 identified that proposal also to the staff of the NRC which is --
23 which will give a person wheeling firm power complete protection
24 in the event that the line is out of service.

25 Also, the other area is whether or not the parties will

1 permit others in the future to have access to an ownership posi-
2 tion in the proposed D.C. tie itself. Again, a part of the settle-
3 ment agreement between CSW and TU provides an excellent mechanism
4 for people to become owners of the D.C. facility today, or if
5 they do not elect to become owners of the D.C. facility today,
6 to have the ability to purchase part of the capacity of that line
7 in the future under certain conditions which are outlined in the
8 settlement agreement between Houston and CSW.

9 The balance of the issues with the staff are some of
10 the normal things you might expect to come up in a licensing
11 effort of a plant. Some of them are simple, and frankly, I think
12 we have reached an agreement on most kinds of conditions that
13 you normally expect to see for a nuclear generating plant.

14 Some, at least one or two of these issues, are difficult.
15 One revolves around our relative duty, they say, of Texas Utilities
16 to make sales of power wholesale without limitation. We at
17 Texas Utilities have indicated to the staff that we cannot under-
18 take to build generation for the world, and to the extent that
19 we have generation available, we have certainly indicated our
20 willingness to enter into agreements, which we have done in the
21 past, which relate to sales, wholesale.

22 But in order to impose upon us the obligation of an
23 absolute duty to sell power that we might not have or to build
24 generation that we cannot afford is an issue between us. And I
25 think really those are the principal questions that remain

1 unresolved in the discussions between ourselves and the staff.

2 The issues that remain unresolved with the Department
3 of Justice surround the question of our conduct in connection
4 with proposals for interconnections between ERCOT and the Southwest
5 pool in the future.

6 I have indicated that we have reached an agreement with
7 the staff with respect to that issue. We have submitted that
8 issue to the Department of Justice, and we have had many, many
9 discussions with the Department with respect to a provision
10 governing our conduct with respect to the proposed future inter-
11 connections; and we have not yet resolved that with the Department
12 of Justice. I think we have gone a long way, but we have not
13 yet resolved it; and I'm not ready to say today that that particu-
14 lar issue will be resolved by the Department. But hopefully, if
15 that is resolved, the remaining issues with respect to license
16 commissions for Comanche Peak are resolvable. I do not know
17 currently of any fundamental problem that may exist with respect
18 to other issues; but as I said earlier, we haven't had time to
19 really flesh out our discussions with the remaining license
20 conditions to the extent we have with the staff.

21 CHAIRMAN MILLER: Thank you. That has been very
22 helpful. Thank you. The Board appreciates your explanations.

23 Yes.

24 MR. COPELAND: Mr. Chairman, I will make my comments
25 brief. I would just like to emphasize to the Board that we have

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1 been involved in the very long, bloody and difficult battle in
2 this case for over four years now. Myself and other lawyers in
3 this room have done nothing else for the last three months but
4 try to reach principles upon which we can settle this controversy.

5 We think it is in the interest of our clients and in
6 the interest of all the agencies here in Washington, the courts
7 and everybody, to bring this matter to a close.

8 I was in a conference room yesterday with the presidents
9 of all the companies who were involved in signing this agreement,
10 and when they signed this agreement, I can assure they believe
11 they have laid aside their differences, and they are ready to
12 move on with getting these interconnections constructed and going
13 about the business of generating and selling electricity.

14 They have lots of other problems on their minds besides
15 this case, and they want to put it aside. They have worked very
16 hard among themselves to settle this case.

17 I think that we are practically at the door of finally
18 resolving this once and for all. I think the Board has shown
19 great wisdom in putting off the trial on this matter to allow
20 us the time to work on settling this controversy.

21 It's obvious from the reports that you have received
22 on the last two occasions that the parties have worked diligently
23 to do something to settle this case and have done so quite fre-
24 quently.

25 I think that the Board for that reason should look

1 favorably upon the requests for further extension of time in this
2 proceeding. Houston is in a little bit of a dilemma in that
3 respect. We frankly just punted yesterday in filing our status
4 report on the question of how much time we should request.

5 I think it is only fair to say that to some extent I
6 agree with the staff's position. I think a longer period of
7 time may prove more fruitful this time than just a thirty day
8 extension.

9 CHAIRMAN MILLER: What do you recommend to the Board?

10 MR. COPELAND: The other side of the coin, Mr. Miller,
11 is that TU has a case that is on a much faster track than ours,
12 and I really think at this point it is somewhat unfair for Houston
13 to suggest the length of time that ought to occur. I think TU
14 is the one that is under much more pressure to get their plant
15 licensed.

16 I would defer to Mr. Sampels on that question. Those
17 are really all the comments I have.

18 CHAIRMAN MILLER: Thank you, Mr. Copeland.

19 MR. GLASER: Do you think Houston Lighting and Power
20 would accede to Mr. Sampels' recommendation of thirty days?

21 MR. COPELAND: Yes, sir, definitely and perhaps
22 frankly, I think it will help the settlement to let the matter
23 go forward at the FERC who are going to call a settlement conference
24 at that point, which should receive comments from all of you
25 electric utilities in the Southwest power pool that are interested

1 in this proceeding.

2 As you know, I've emphasized many times that there are
3 a number of other parties who have interest in this overall liti-
4 gation that aren't necessarily represented here today. I think
5 that having received comments from them, I frankly think we will
6 get very strong support for the settlement from the totality of
7 the industry.

8 CHAIRMAN MILLER: What is your timing of such proceedings
9 with FERC?

10 MR. COPELAND: That is the problem, sir. We do not have
11 a specific date set yet, but I would think within sixty days
12 we would be in and out of the settlement conference.

13 CHAIRMAN MILLER: Mr. Miller.

14 MR. MILLER: Thank you.

15 I would just like to underscore what Mr. Sampels and
16 Mr. Copeland have already told the Board. The settlement agree-
17 ment that was executed yesterday represents in the judgment of our
18 clients a very significant milestone and resolution of our differ-
19 ences with TU and Houston which have encompassed many forums in
20 addition to the NRC.

21 It does in fact provide a framework for resolution of
22 these very complex issues -- not just complex in themselves in
23 terms of dealing with the individual parties, but those which
24 affect the interests not only of this agency but of many other
25 state and federal agencies and other electric utilities which have

1 an interest in the outcome of this matter.

2 As Mr. Sampels pointed out, the settlement still requires
3 further discussion with the interested governmental agencies with
4 respect to such matters as wheeling, emergency backup, and perhaps
5 other matters as well, such as those dealing with the right of
6 access, if you will, by way of purchase to the D.C. interconnection
7 in the future.

8 I think that we, as we say, regard this as a significant
9 milestone. It has taken most of the energy and attention of the
10 knowledgeable people in our office and the executives in our
11 companies. For that reason we are unable to make substantial
12 progress in connection with our differences with the Public Utility
13 Board of Brownsville.

14 Mr. Spiegel, representing the Board, has been in contact
15 with members of our firm, myself included. We have begun the
16 negotiating process. I am hopeful that we can now turn our
17 attention to the city of Brownsville and attempt to resolve our
18 differences there as well.

19 I would hope that that process could begin soon. However,
20 I should say that the overall settlement has been agreed to, which
21 we will be working hard to implement. It is going to kind of
22 set the framework for resolution of our differences with Brownsville
23 as well.

24 It is for that reason really that we have ordered the
25 settlement efforts as we have. And I have referred to our

1 resolutions with Houston and TU, and now to deal with Brownsville.

2 CHAIRMAN MILLER: Thank you.

3 Any other questions?

4 Thank you.

5 I think I may not have asked you and I don't see it
6 in your status reports. What time does your client suggest,
7 Mr. Miller?

8 MR. MILLER: We take no position on this other than
9 to duly advise the Board that there is a process in motion at
10 FERC that is going to take the attention of all the principles,
11 except perhaps the NRC staff and the Department of Justice. That
12 process really gets into motion this Friday when the prehearing
13 conference is scheduled at FERC.

14 I'm not quite certain myself of the timing of the steps
15 that are set out in the settlement agreement. But I guess I agree
16 with Mr. Copeland that approximately a sixty day period is
17 reasonable to determine how both the FERC staff and the other
18 parties to the FERC proceeding, not all of whom are present in
19 this proceeding, are going to react to the settlement proposal.

20 I would say that within that timeframe we will know
21 whether the government is in fact moving ahead on an expeditious
22 basis, or if we run into some snag, which I must say we do not
23 anticipate at this time.

24 MR. GLASER: What purpose would you serve by this Board
25 holding a prehearing conference thirty days hence if it is going

1 to take sixty days at least to accomplish a settlement with FERC?

2 MR. MILLER: It may very well be that you would then
3 have the opportunity to inquire more closely of all the partici-
4 pants as to where we stand in the settlement process. I think
5 that within thirty days there will have been significant movement
6 at FERC. On the other hand, it probably will take sixty days
7 that I mentioned, that Mr. Copeland referred to, before we know
8 for certain whether the settlement is going to proceed up the
9 ladder there.

10 CHAIRMAN MILLER: Well, Mr. Sampels has pointed out,
11 and I think other counsel have recognized, that they probably are
12 most sensitive to the time factors and perhaps have the most at
13 risk here in seeing that they move most expeditiously. I think
14 all counsel concur in that point of view.

15 MR. MILLER: Yes, sir.

16 CHAIRMAN MILLER: At the very end we'll get back to
17 you, Mr. Sampels, and see what consensus has developed.

18 All right. Let's see who has not reported among the
19 private utilities engaged in negotiations.

20 Who wishes to go next? How about Brownsville, the
21 city of Brownsville?

22 MR. SPIEGEL: My name is George Spiegel. I entered
23 my appearance today for the city of Brownsville.

24 We have had one discussion about a month and a half
25 ago with Mr. Miller, and my understanding is -- perhaps we should

1 clarify that on the record -- Mr. Miller is speaking for Central
2 and Southwest and has authority to negotiate for all of the
3 subsidiaries, including Central Power and Light. I believe that
4 is the basis of our operating, and I am not sure all of the
5 officials of Central Power and Light recognize this. I hope
6 they should.

7 We have had forthright discussions, and at this point
8 we are waiting to hear from them. I understand that Mr. Miller
9 has been busy these last few weeks, so we have not seen this
10 agreement yet, and we don't know what our position is.

11 Certainly there is all the evidence that these people
12 are very serious about settlement, so we will go along with
13 whatever time the Board in its wisdom decides. However, we do
14 think that there are some substantial issues; we don't know for
15 sure, but that there may eventually have to be hearings.

16 CHAIRMAN MILLER: Thank you, Mr. Spiegel.

17 I suppose the record can show that you and the Board
18 have now been served this morning with a copy of this agreement
19 which was signed, I believe, in Chicago yesterday. Is that
20 correct?

21 MR. SPIEGEL: Thank you, sir.

22 CHAIRMAN MILLER: Thank you.

23 Let's see. Who else wishes to go next?

24 MR. BURCHETTE: My name is William Burchette, appearing
25 for Tex-La Electric Cooperative of Texas.

1 We have executed a letter of intent with Texas Utilities,
2 particularly Texas Light and Utilities, and as indicated in our
3 status report, we are moving forward to execute agreements which
4 are necessary to satisfy our participation in Comanche Peak.

5 I would just make one comment with respect to the
6 extension of time, to say that we now as potential co-owners in
7 this Comanche Peak project would like to move forward just as
8 Texas Utilities would; so we would support the thirty day extension
9 requested by Texas Utilities.

10 That is all I have, sir.

11 CHAIRMAN MILLER: Thank you.

12 I suppose we have not yet heard from South Texas
13 Electric Cooperative, Inc., and is that Medina, M-e-d-i-n-a,
14 Electric Cooperative, Inc.

15 MR. JOHN: I would like to begin by hoping to be
16 served with a copy of that settlement agreement.

17 CHAIRMAN MILLER: Very well. It will be served right
18 now. We have a very expeditious service. Let the record show
19 you have now been served.

20 (Laughter.)

21 MR. JOHN: With that in mind, I drafted my statement
22 for the status report unaware that the statement had been signed.
23 I expressed certain concern about not being party to a settlement
24 until after it has been agreed to by the major parties and is
25 being circulated for approval. That having occurred, I'm hopeful

1 now that the provisions of the settlement would treat most of
2 our concerns.

3 I am gratified to hear from Mr. Sampels that at least
4 part of the settlement does go to the question of interconnections
5 in the future and what the effect would be on ERCOT, and that
6 the parties, other than one of the parties to this proceeding
7 and perhaps one of the owners of the D.C. interconnection that
8 is being contemplated is the party to execute that interconnection.

9 So what I would recommend again is perhaps an extension
10 of time to give my clients and other clients to the proceedings
11 who have really not been favored with copies of this to look at
12 it and decide whether or not it adequately treats their needs.

13 I assume that the proponents of the settlement will be
14 hoping to inform me by communication bilaterally or within a
15 group ourselves and other intervenors to the proceeding in an
16 effort to resolve any differences we might have once we have
17 had a chance to look this over.

18 In that vein I will certainly have no problem with a
19 thirty day extension or even perhaps a longer extension if the
20 Board feels it is warranted.

21 CHAIRMAN MILLER: Thank you. I believe that your report,
22 which was dated June 9, 1980, and received promptly, indicated
23 basically that you would like to negotiate, that you had a few
24 phone conferences or contacts, but you haven't really been invited
25 to participate face-to-face and you haven't been favored with

1 copies of much of anything, and you would like to become a party.
2 Is that about it?

3 MR. JOHN: I have an invitation here.

4 (Laughter.)

5 MR. JOHN: I have to say we have felt there were docu-
6 ments being circulated that we had not seen. I don't mean to
7 indicate that we expect to be able to walk into the dance and
8 have someone invite us to dance every time. I do feel as parties
9 to the case that we are one of select few. There are perhaps ten
10 parties in the proceeding, and we do have a position to state and
11 would like to be involved in negotiations to the extent that is
12 possible.

13 I understand given the complexities of the case and
14 the history of dealings between the major three parties here
15 it certainly is understandable that they would want to resolve
16 their differences between themselves and among themselves as the
17 first order of business. But again, I certainly don't want there
18 to be any burden upon us to have to try to undo a provision of
19 settlement that has been agreed to by the big three, if you will,
20 simply because we weren't privy in the first round.

21 I feel that we as a party should have every opportunity
22 to make our position known, again not on the outside looking in
23 and trying to upset something that has been worked out.

24 I should close by saying I have every reason to believe
25 the settlement is going to be acceptable. I know of nothing to

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1 indicate that it won't be. We will do our best to live with
2 whatever is in the interest of this generally and all the parties
3 to the proceeding.

4 CHAIRMAN MILLER: Thank you.

5 MR. COPELAND: Mr. Chairman, might I just comment in
6 response to that? I'll be very brief.

7 CHAIRMAN MILLER: Yes.

8 MR. COPELAND: I want Mr. John to understand that the
9 door is definitely not closed to his client, and I think that
10 it is important to emphasize that this thing is going to get a
11 full airing in the form of a settlement conference involving all
12 of the utilities; and certainly all of their comments will be
13 taken into consideration in the context of this settlement and
14 not limiting our discussions by any agreements in that conference.

15 CHAIRMAN MILLER: Thank you.

16 I believe we're down now, are we not, to the staff and
17 the Department of Justice. Is there anyone whom I may have over-
18 looked inadvertently or who would like to appear before that?

19 Well, we will give the staff your choice. Sometimes
20 we jumped on you earlier in the game. We're not going to jump on
21 you at all, but we're going to give you a choice between your
22 position and the Department of Justice. Which do you choose?

23 MR. CHANANIA: Perhaps because we have been more involved
24 in the settlement effort in the last month than the Department of
25 Justice, it is appropriate for us to speak now.

1 CHAIRMAN MILLER: Fine.

2 MR. CHANANIA: I did want to make one correction to our
3 status report given the last minute nature of things these days.
4 We indicate in that report that we received a copy of the settlement
5 proposai yesterday. Indeed, we didn't, although Mr. Copeland
6 made a gracious offer last night to bring one to my home. I
7 really couldn't see any purpose at that point knowing that we'd
8 get one this morning.

9 As with some of the other parties, we have also been
10 served this morning. We were in our discussions with Mr. Sampels
11 yesterday able to talk about and see portions of the agreement,
12 but as you know, it was signed apparently at 2:00 yesterday in
13 Chicago. It was difficult to be availed of an opportunity to
14 see the entire thing before, if you will, it was actually official.

15 Also, we made an attempt to serve by messenger parties
16 yesterday with the staff's status report. It has been mailed to
17 everyone on the service list, but if anyone wants one, they are
18 certainly welcome to one. I have extra copies today.

19 As far as the staff's efforts over the last month have
20 been concerned, it has really been, if you will, a bifurcated
21 effort. On the one hand we had a set of license conditions
22 already existing with the Texas Utilities Company, and that seemed
23 to provide a basis that we could have discussions with them about
24 possible changes that might be necessary as far as the staff
25 was concerned, at least on certain issues.

1 Naturally, the D.C. interconnection and all those associ-
2 ated issues such as getting to and from the interconnection, the
3 emergency backup, ownership rights, those are issues which of
4 course were not addressed in the old set of license conditions,
5 and indeed we have suggested some of our views on before this.
6 But now we'll be presenting our views in a much more concise
7 fashion, I imagine, with the settlement proposal now in hand
8 and given an opportunity to analyze it.

9 In that regard we are in a sense waiting this month to
10 hear some things. I think it is evident from the report from the
11 other parties that they have been working extremely hard and
12 indeed have kept the staff informed that they were doing so,
13 but just simply could not arrive at an agreement that we could
14 see or at least arrive at a point where we could receive a communi-
15 cation about the substance of it. So we moved in areas where we
16 could.

17 Now, as Mr. Sampels indicated, we have made substantial
18 progress in seeing eye to eye on a number of issues. There are
19 some, as he has outlined, that are important and which remain in
20 discussion. I don't think that there is anything that I perceive
21 right now as unresolvable. Certainly, the wheeling provisions
22 are extremely complex. I think they may be the toughest of all to
23 overcome.

24 But as I sit here or stand here today, I don't see
25 anything that can't be worked out, at least on the basis of looking

1 at the movement that has occurred already, and trying to say if
2 that kind of spirit and that kind of flexibility still exists.
3 Then we can certainly say that settlement on all issues remains
4 at least the most worthwhile path to take or to pursue at this
5 time.

6 I read Mr. John's status report yesterday, and it did
7 bring home a point to the staff that we feel sensitive about that,
8 if you will, given the lack of time to have a concrete proposal
9 from CSW, HL&P, and TU so that we could actually have a position
10 on some of those areas that they have covered.

11 We naturally couldn't consult with other people in
12 the case as to what their views were. On some of the issues that
13 we have been discussing unilaterally with TU, it seems that the
14 discussions were yesterday in part.

15 We have presented a proposal to them and formed the
16 basis of those discussions, and we certainly intend to consult
17 other parties as to the staff's view, which is contained in those.

18 I suppose the final thing which I would like to mention
19 is that while we have had a set of license conditions with
20 Texas Utilities Company upon which to launch discussions, we
21 really don't have any of the other major parties to the settlement
22 proposal today, namely HL&P and CSW.

23 To the extent that those are necessary, certainly for
24 some of the newer subjects, if you will, surrounding the D.C.
25 interconnection, that is going to just take time to work on. We

1 have a basis that they have provided this morning to start looking
2 at that, and certainly this is not a first blush effort. We have
3 made our views known, and now we have something back. We can
4 begin, as I said, to be more concise and directed.

5 I guess that leads me to the sixty to ninety days. We
6 suggested that. Naturally we, of course, are willing to accede
7 to the consensus in the room. In that regard I will say that
8 as far as the Comanche Peak settlement, as late as February 1982
9 as far as the staff is concerned, which is a three month extension
10 from the prior staff estimate of November '81.

11 Now, as you know, there are different estimates, some
12 held by the staff and some held by the licensees, as to when that
13 operational date will occur. But at least as of yesterday that
14 was the most current view of the staff.

15 In light of that ninety day shift in the operational
16 date and in light of the tasks which remain, certainly for the
17 parties and the staff, namely starting the proceedings at FERC
18 necessary to accomplish some of the central portions of this
19 settlement, talking with the parties and drafting license condi-
20 tions and reaching a final agreement, if possible, with some of
21 the parties in the room, it just seems as though thirty days is
22 going to be a pretty short time to do that.

23 I understand, and we don't wish to cause any delay in
24 the licensing of the plant if at all avoidable, so it is with
25 some hesitation that I suggest sixty to ninety days; but

1 nevertheless, I felt compelled to give you what I thought was
2 a time period which would be the most comfortable.

3 Now, we will accomplish, of course, if this date is
4 thirty days, we will accomplish what we can in that thirty days.
5 It may be that the Board will wish some kind of interim check
6 if they were to grant a sixty to ninety day period, just to make
7 sure that people were moving along and had not all of a sudden
8 gone on their summer vacations for the first thirty days of that
9 sixty to ninety day period.

10 I do think that in light of all the areas which do
11 remain outstanding among the parties that the sixty to a hundred
12 days was at least our best estimate as to where we could
13 in and say we have settled on all the things we can settle on.
14 It may be everything, it may be nine-tenths, it may be half --
15 I can't say at this point. But we have reached the end of the
16 settlement track, and we can go from there as to wherever. If
17 there is a proceeding left, we can talk about that at that time.

18 CHAIRMAN MILLER: Any questions?

19 All right. Thank you.

20 Ms. Cyphert, I guess on behalf of the Department of
21 Justice we'll hear from you.

22 MS. CYPHERT: Yes, sir. I think that the Department's
23 status report reflects the work that the Department did this
24 month exploring settlement. It was very little, not because the
25 Department is not interested in trying to reach a settlement in

1 this case but because of the fact that we felt that one substantial
2 issue of this case had there been no movement on which would
3 satisfy the public interest, and for that reason --

4 CHAIRMAN MILLER: What was that?

5 Have you identified that?

6 MS. CYPHERT: Yes, we have identified that. They are
7 at issue, Your Honor. And because there was no movement on that
8 issue which we felt would satisfy the public interest, we have
9 spent most of our time preparing for trial in this matter.

10 I would point out to the Board something which I know
11 that you are sensitive about at other staff conferences; that is,
12 the difference between public and private interests. The private
13 interests in this case appear to be satisfied. Yet, I would point
14 out that the public interest, at least in the Department's
15 opinion, has not yet been satisfied.

16 Mr. Fabricant has asked me to clarify --

17 CHAIRMAN MILLER:ardon me. I've looked through your
18 statement, and I don't seem to see the issue that you describe
19 as being unresolved.

20 MS. CYPHERT: We did not clarify it for the Board, Your
21 Honor, because it was not assured how much detail the Board was
22 interested in getting into the actual settlement negotiations of
23 the parties.

24 CHAIRMAN MILLER: We don't want to go into it in detail.
25 We certainly don't want to interfere or hinder in any way the

1 negotiating posture of any of the parties. However, it is diffi-
2 cult to follow your discussion of public and private interests
3 in a vacuum. So if you could indicate for us in some way what
4 we're talking about --

5 MS. CYPHERT: Precisely, Your Honor. The issue is
6 the Department contends that utilities that have applied for
7 license in these nuclear plants cannot continue to refuse to
8 interconnect in interstate commerce so as to avoid federal juris-
9 diction under the Federal Power Act.

10 You will note that I don't believe that issue is
11 resolved in the settlement papers that have been presented to you.
12 They have merely been put on the back burner to be resolved at
13 some future date if there is additional time.

14 MR. GLASER: I haven't read all of the information
15 that attempts to address that subject.

16 MS. CYPHERT: It does not resolve the issue. It leaves
17 it to be determined by this Board ultimately at some future date.
18 If a --

19 MR. GLASER: Because of the refusal to interconnect?

20 MS. CYPHERT: If there is a refusal to interconnect,
21 if the people have first gone to the FERC to obtain a waiver on
22 behalf of the utilities here which wish to remain outside of
23 federal jurisdiction. And the Department contends that that
24 refusal to deal is a reversal of the antitrust laws.

25 MR. GLASER: I didn't quite see it that way, but perhaps

1 I will take a look at it again.

2 MS. CYPHERT: The Department believes that the issue
3 that is before the Board now does not resolve the issue; it merely
4 postpones the issue to some future date. The Department believes
5 that if the issue is to be litigated, it should be litigated now
6 and here in this forum.

7 MR. GLASER: Is the Department suggesting that there
8 is a party to these proceedings that will not be able to inter-
9 connect because of refusal by Houston Lighting and Power's desire
10 to maintain itself from federal jurisdiction?

11 Is that what you are saying?

12 MS. CYPHERT: I don't know the answer to that, not
13 today, and I don't know that it is incumbent upon the Department
14 to produce a body that has a plan in mind for what will happen
15 forty years from now which is the duration of the license.

16 MR. GLASER: Where is the case if nobody has refused
17 the interconnection? Where is the controversy that this Board
18 would have the power to look into?

19 MS. CYPHERT: I understand your problem, and the
20 problem is essentially that you do not want to postpone or
21 provide a mechanism whereby people will be prohibited or even
22 dampered.

23 MR. GLASER: Don't you have to have conduct that is
24 inconsistent with the law before this Board has jurisdiction?

25 MS. CYPHERT: We believe there is sufficient past conduct

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and existing conduct.

MR. GLASER: Wasn't that resolved in Exhibit C? I don't know whether it is. I will take a look at it.

MS. CYPHERT: I don't know whether it is appropriate really for us to be arguing the merits of a settlement dispute, which is one of the reasons I was hesitant to bring it up. But since Chairman Miller did, I want to lay it out so you can see what our problem is.

MR. GLASER: I see. That is very hopeful. The only issue then that the Department of Justice is concerned about is an alleged refusal to interconnect by Houston Lighting and Power.

MS. CYPHERT: No. That is the issue we have not been able to make any further progress on. We have not yet gone on to consider the other issues that are before the Board at the moment on the interconnection. We have not made a threshold determination as to whether or not the D.C. proposal is in fact in the public interest. In fact, there may come a time when the Department would point out to the Board where there are specific parts of the current proposal which were in fact not in the public interest. That is a separate issue, and we have not yet reached a point of analysis of that issue, because we feel the first issue was so paramount to the concerns of the enforcement of the antitrust law that that issue must be addressed.

CHAIRMAN MILLER: Let me inquire, Ms. Cyphert -- there is not any effort to interrupt the cogency of your argument, but

1 it seems to me you are talking about two different things. One
2 is a whole series of complex and discrete problems with which all
3 of these utilities and public bodies are concerned and which also
4 trigger the jurisdiction, as we understand it, of NRC and this
5 Board -- namely, whether the utilities under the license or
6 licenses would create or maintain a situation inconsistent with
7 either the named antitrust laws or underlying spirit of purpose.

8 Now, that, while large and complex, is still a discrete
9 subject matter as we view it.

10 MS. CYPHERT: I understand the distinction you are
11 trying to make, Your Honor.

12 CHAIRMAN MILLER: Secondly, you were telling us this
13 morning that the Department of Justice apparently would like to
14 use this proceeding or these proceedings, at any rate, in order
15 to establish some larger purpose as the Department views it,
16 namely, whether the Department's functions, and powers, and responsi-
17 bilities, a system of restricting interstate commerce, whatever
18 may be the ramifications, whatever may be the FERC jurisdiction
19 and the like, solely to avoid jurisdiction itself almost ipso
20 facto involves the antitrust laws that the Department is charged
21 with enforcing.

22 If I understand the thrust of that larger purpose, what
23 I am suggesting to you is that either you're going to have to
24 bring that desire of the Department of Justice within the scope
25 of the jurisdiction as well as the conservation of time and

1 energy of the Board. While it would remain an interesting
2 philosophical question, we would not be greatly disposed to spend
3 a lot of time on it ourselves. As a consequence of this, that's
4 why I'm trying to focus your argument on matters the Board at
5 least deems to be before it, and having time and other implications.

6 Now, if you want to submit a brief as to why you feel
7 that the larger purpose can be used by the Department of Justice
8 for the enforcement purposes of this proceeding, of this kind of
9 proceeding, we will give you leave. But at this stage of the
10 proceeding where the parties, under our suggestion and durations,
11 are engaged in an attempt to negotiate certain concrete matters,
12 both multiple and complex, we might be on a course that would
13 never collide or never meet.

14 I suggest you take this into consideration in your
15 argument.

16 MR. GLASER: Excuse me. The Department hasn't had a
17 chance to study very thoroughly your settle agreement.

18 MS. CYPHERT: Since it was handed to us this morning,
19 I think that is a fair comment.

20 MR. GLASER: You haven't been a party or participated
21 in any of the discussions on this.

22 MS. CYPHERT: We have had a general knowledge of the
23 four or five points that were presented to the Board about two
24 months ago, and we have had some discussions a month ago on some
25 of the specifics; but we have not been party to the discussions

1 which led to the piece of paper which has been presented to the
2 Board today which comprises an agreement between principal and
3 agreed parties.

4 That is correct, and for that reason we're not in any
5 position to reassess it. That is why I say we may be in a posi-
6 tion, we may find ourselves in a position that we would want to
7 bring specific matters to the Board's attention. On the other
8 hand, we may not. But for me to foreclose that today I don't think
9 would be wise and perhaps would be a signal to the Board.

10 MR. GLASER: If I could interrupt again. Do you think
11 the Department --

12 MS. CYPHERT: I can't answer that, Your Honor. I would
13 just want to consult with experts that we have available to us
14 and spend additional time talking to the parties if that would
15 be fruitful. So I can't answer anything specific on that point.

16 I would like to return, however, to Chairman Miller's
17 additional comment. I think it perhaps a very useful thing for
18 the Board to look at would be the advised letter of the Attorney
19 General which got this Department involved in this hearing to
20 begin with in the second occasion.

21 The advice letter stated in it that one of the Depart-
22 ment's principal concerns in the matter was that there was a
23 concerted action among the applicants, not just one party making
24 an individual decision to avoid interconnections, to stay out of
25 interstate commerce, but a concerted action. And the Department

1 felt at that time that that act was a matter that would not only
2 create an inconsistency for the antitrust laws but maintain one,
3 and the licenses would further enhance that.

4 I think you ought to keep in mind the fact that you
5 want to make that nuclear power available to any place in the
6 country that wants to be able to use it, and if people cannot
7 follow the specific requirements that are set forth in the settle-
8 ment for whatever reason, that matter should not have to come
9 back before this body and be relitigated.

10 CHAIRMAN MILLER: Just a minute. The making of the
11 access to nuclear power isn't quite on the same track as what
12 I understood you to be telling us were the interests of the
13 Department in enforcing the antitrust laws. And since you are
14 talking about that advice letter, which I think does get into
15 many of these points, I think you must not only consider the
16 advice letter but the conditions which prevailed in the state of
17 Texas for about 50 years preceding it.

18 So the Department is telling us why concerted action
19 or not, why concerted action, if that is what the evidence would
20 show, would be inconsistent with or in violation of the antitrust
21 laws now and back when the advice letter was sent, back when the
22 first advice letter was not sent, and back 40 or 50 years when
23 these people in some of their allocations were doing almost
24 exactly the same thing with reference to staying out of interstate
25 commerce and for reasons which you or the Department may infer.

1 So you don't just look at the letter, but tell us now
2 what has become suddenly so significantly different in terms of
3 the antitrust laws that we are looking at, starting 50 years ago
4 and so forth, if you wish to pursue that subject as such, because
5 suddenly the access of nuclear power, you certainly would have
6 to assure us how it would qualitatively change the reasons for
7 conduct which have originated in the absence of nuclear power,
8 and would have some logical nexus that the letter itself did not
9 go into, as I recall it.

10 MS. CYPHERT: It seems to me that at the appropriate
11 time if we're going to be arguing positions on trial --

12 CHAIRMAN MILLER: That is true, and there's a question
13 as to whether or not we're going to have a trial. Then it is
14 peculiarly important that the Department isolate its thinking
15 along the lines that involve our jurisdiction. You could possibly
16 take the opportunity to brief it, because there is no point in
17 going into matters that are not relevant to what this Board is
18 engaged in.

19 MS. CYPHERT: I appreciate the comment of the Board in
20 that direction. I am sure it will be very helpful.

21 CHAIRMAN MILLER: I've not conferred with my colleagues
22 on that.

23 MS. CYPHERT: I am sure that guidance will be very
24 helpful to us in continuing the process. I would point out that
25 the Board has also been cognizant of not relegating its authority

1 to other agencies. We recognize that there are other agencies
2 involved in these proceedings and have individual responsibilities
3 in cases that are ongoing, but the primary responsibility of the
4 Department is to pursue a resolution of whether or not the allega-
5 tion is made and the Attorney General's advice is consistently
6 antitrust laws.

7 We have endeavored, and I think the Board has commented
8 before on the large amount of discovery done in this case in a
9 relatively short period of time in order to pursue a trial and
10 an alternate resolution of these issues which one way or the
11 other is going to be presumably in the public interest, since
12 obviously justice delayed and may, in fact, justice denied,
13 particularly in view of the need of this country to have a nuclear
14 plant functioning. And so the Department is ready to proceed with
15 the trial.

16 We do not feel today that we could come before this
17 Board and say we are ready for a settlement of this case. It
18 may be that the profit parties' interests have been satisfied,
19 but the Department believes today that it cannot tell the Board
20 that what we have been presented with, what our knowledge has
21 been today would be sufficient to warrant this Board putting the
22 trial off any further.

23 With that reason, in our status report we have asked
24 this Board again subsequent to a motion we filed this month to
25 set a trial date. It may be that an extended amount of time to

1 pursue additional settlement is going to be a foregone conclusion
2 from the attitude and the representations made to this Board; but
3 I would strongly counsel you that if in fact you do determine that
4 an additional period of time, we hope that it would be short
5 enough to force the issues to a head, that a trial date also be
6 set which we believe will serve the public interest.

7 CHAIRMAN MILLER: What is your recommendation, Ms.
8 Cyphert, as to the date of imposing any obligations, whatever they
9 may be, upon the parties?

10 MS. CYPHERT: The Department really -- we filed a motion
11 with the Board I believe two weeks ago. I don't have the precise
12 date in front of me.

13 CHAIRMAN MILLER: May 21.

14 MS. CYPHERT: We requested a trial date, I believe, the
15 second week in July -- that is approximately 30 days from now --
16 at least to have a trial date set by that period of time. We
17 are committed, and we are prepared to go forward on a track that
18 would have us ready to proceed at that period of time.

19 I would strongly, however, counsel the Board not to
20 put our trial, at least to put a trial date down pending what
21 may or may not happen in another agency within a given amount
22 of time.

23 MR. WOLFE: What if you were drawn into settlement
24 negotiations more and more between now and July 8th? Would you
25 still be ready to go to trial?

1 MS. CYPHERT: Yes, Your Honor, we would be. I have
2 been involved in trials -- and I'm sure many members of the Board
3 have been -- that are in fact settled the day of the trial or
4 into the trial.

5 MR. GLASER: Not cases of this complex nature. I can
6 tell you I've never been involved in one that was settled the
7 day of trial, not that involved cases that are every bit as
8 complex as this, it not more so.

9 CHAIRMAN MILLER: Mostly it's jury trials -- the issues
10 here are somewhat different.

11 MS. CYPHERT: The Department believes that a trial
12 date should be set at this hearing conference today. We believe
13 an early trial date --

14 CHAIRMAN MILLER: We want to commend you. Do you have
15 your trial brief prepared?

16 MS. CYPHERT: Yes.

17 CHAIRMAN MILLER: We would like to see your trial brief,
18 and we want to examine it in camera because we don't have the
19 others; but we do wish to get down to the fundamental question
20 as to whether or not there should be a trial. That has had some
21 impact on negotiations. We don't know about them and don't want
22 to -- the product of them which is just now coming to light,
23 and we want to analyze them.

24 But before you start a trial where there are serious
25 questions, jurisdictional and otherwise, as to whether or not there

1 should be a trial or what issues there are that simply try those
2 things, those things are normally discussed by a motion in court,
3 and trial briefs would certainly tend to isolate these questions.
4 But we would be interested in that.

5 We are not going to impose a duty on the Department,
6 but since you have told us that you are ready for trial and that
7 you do have a trial brief, we would like for the Department to
8 consider submitting in camera, if you like, so that you will not
9 be placed at any disadvantage, consideration of these questions.
10 The Board is quite interested in some of these questions that
11 would transcend, perhaps, the settlement issues.

12 We would like to know what the Department's view would
13 be. If you see this as a vehicle the Department wishes to use,
14 we would like to have your citations.

15 MS. CYPHERT: We will consider that, Your Honor, in
16 determining whether or not it is appropriate for the Board to
17 be viewing the trial brief before the trial. I am sure we would
18 want to take a look for our own protection to see if that might
19 somehow prejudice us.

20 CHAIRMAN MILLER: The way you are considering it, that
21 would be simply one means of what the Board is now asking the
22 Department to do, namely to come forward with a showing that
23 regardless of what you may discern about the settlement negotia-
24 tions, why there should be a trial in any event to indicate what
25 the Department perceives to be the public interest.

1 CHAIRMAN MILLER: The time for you to do that is now.
2 We would certainly expect the Department to take a view which
3 significantly differs from that of the other parties, including
4 the staff with its public interest responsibility. And that is
5 it. We would like to know what you consider to be the law, what
6 the Board should do, what the jurisdiction is, what its discretion
7 is, how should it be exercised. We have the same right to any
8 of the other parties who would wish to join in this, but if I
9 can do it in a way that would not interfere with the settlement
10 negotiations which are going forward, which would take a lot of
11 time and energy. But this is an ongoing matter of the Department
12 and possibly some of the other parties may wish to address to
13 the Board.

14 So we're going to have a recess shortly to consider
15 some of these matters, and we suggest you might want to give some
16 consideration also of that so that our record will reflect so
17 far as it can what everyone is going to be doing in the next
18 thirty days, or sixty, or ninety or whatever.

19 Give that some thought when we are over recess. That
20 is all I'm suggesting.

21 MS. CYPHERT: Certainly, Your Honor.

22 MR. GLASER: Could you tell the Board how the public
23 interest could be prejudiced if we were to grant an additional
24 thirty day extension of time previously established in this
25 proceeding/

1 MS. CYPHERT: How the public interest would be harmed?

2 MR. GLASER: Yes.

3 MS. CYPHERT: I believe that the public interest would
4 be harmed only insofar as there is no trial date which is set
5 forth. In the event that a hearing does not go forward, obviously
6 it would be very difficult for the Department to say that people
7 should not try to publish a settlement. Obviously any time that
8 a settlement can take place that is going to take time and effort
9 and presumably money for the parties and taxpayers, and you can
10 get results presumably sooner than other times.

11 But I would counsel the Board to think also about the
12 effects of the public interest if in fact the hearing and ultimate
13 resolution is made. For that reason we believe that if the
14 Board grants a short additional period of time, which it seems
15 inclined to do from the comments that we have heard today, that
16 you would also set a trial date, so that for the parties that
17 may in fact remain that we may proceed on.

18 The Department does not want to have a record or be in a
19 position of having held up the licenses of these nuclear plants.
20 We are ready to proceed. We are ready to go forward. And we
21 would like you to keep that in mind in making your determination
22 this morning.

23 MR. WOLFE: As Mr. Chanania has pointed out, I believe,
24 the operation date, is that correct, at least for
25 Comanche has been set for three months, is that correct?

1 MR. CHANANIA: That is correct. As I also pointed out,
2 that is the staff's estimate, and there are differing ones; but,
3 of course, that is the one that we go by.

4 CHAIRMAN MILLER: That is March of 1982?

5 MR. CHANANIA: No. I think it is February 1982.

6 CHAIRMAN MILLER: Thank you. February 1982.

7 MR. MILLER: Mr. Chairman, might I just comment briefly?

8 CHAIRMAN MILLER: Yes.

9 MR. MILLER: On two matters. First of all, it is
10 Central-Southwest's position that the trial brief to the Board
11 by any party would be inappropriate. I think that by their very
12 nature the trial brief is an advocate's position which covers the
13 whole range of issues which might be submitted to this Board if
14 we were in a litigating posture.

15 I would urge the Board instead to ask for statements
16 of position, as I think you indicated to Ms. Cyphert earlier,
17 rather than submission of the trial brief.

18 CHAIRMAN MILLER: Yes, I think you are correct in that.

19 MR. MILLER: Secondly, I would just like to respond
20 briefly with respect to the question of the public interest. I
21 note that no one other than the three signatories and their
22 attorneys to the settlement agreement are familiar with its
23 contents. To characterize it, however, it is simply the settlement
24 of differences between the three major investor-owned utilities,
25 as I think everyone will agree once they have had a chance to

1 look at it from this characterization.

2 It is a conscientious effort instead to take account
3 of the public interest as we have perceived it at this agency,
4 at FERC, and SEC, and at the Texas Public Utilities Commission --
5 the four major agencies that I believe are concerned about the
6 outcome of this controversy.

7 Indeed, the settlement agreement provides for further
8 milestones which are contingent upon positive reactions from the
9 governmental agencies involved as the settlement progresses.

10 I do want to make the record clear on that point, because I don't
11 want anyone to be under the impression -- and I appreciate Mr.
12 John's comments earlier that he has been participating in this --
13 but this is a deal that has been cooked up by the big boys, and
14 everybody has got to take it or leave it. It isn't that at all.

15 It attempts to take account of the interests of the
16 regulators, the interests of the smaller systems, both in the
17 Southwest power pooling and otherwise.

18 MR. SAMPELS: Mr. Chairman, I would like to make just
19 a couple of comments as a result of the positions taken by the
20 balance of the parties here.

21 First of all, if Texas Utilities Company did not
22 believe that further delay or postponement of a procedural date
23 in this proceeding would not facilitate licensing rather than
24 delay licensing, you can be assured that we would not be asking
25 for further time for the purpose of continuing the pursuit of

1 settlement in this controversy.

2 I think Texas Utilities Company and its customers are
3 the parties most directly affected and interested in licensing
4 that plant and is most directly interested in avoiding even one
5 hour of licensing delay with respect to its use. So we believe
6 that additional time to pursue settlement discussions will facili-
7 tate and speed up the licensing process, not delay the licensing
8 process. Otherwise we would be opposing any delay of any sort
9 in connection with this case.

10 CHAIRMAN MILLER: Mr. Sampels, let me inquire, in the
11 event that settlement is not ultimately achieved in a significant
12 part, what would be your position with regard to your client
13 regarding the procedural and timing status of trial of whatever
14 issues remain?

15 MR. SAMPELS: Insofar as time is concerned -- maybe I
16 haven't understood your question.

17 CHAIRMAN MILLER: Assuming you had to crank up for
18 trial thirty days or ninety days, and the settlement had not been
19 accomplished or had not been accomplished to all parties or on
20 all issues so that something remains for trial, how could the
21 parties be reasonably expected to get geared up to go into trial
22 as speedily and effectively as possible in reference, therefore,
23 to both issues, inclusion of trial preparation and commencement
24 of trial.

25 MR. SAMPELS: I believe that when it is determined within

1 a reasonable period of time in the future that all issues cannot
2 be resolved, that it is absolutely essential that we have a pre-
3 trial conference before this Board so that we can identify the
4 remaining issues. Frankly, I am not prepared to argue the point
5 today.

6 Frankly, I think that almost even at the status of some
7 of the discussions today, virtually all issues requiring any
8 significant amount of evidence are resolved or potentially re-
9 solved. I think what has occurred has had an important impact
10 upon what are the issues before this Board, if any, by the time
11 further discussions are received.

12 I can't forecast, of course, when that would occur.
13 Frankly, I would very much hope that it would occur sooner than
14 later; but at the present time I think we can see the light at
15 the end of the tunnel insofar as the licensing procedure before
16 this Board is concerned, because the longer we are able to talk,
17 the less time we're going to have for trial in this case. So
18 I think that we are chipping away, if not eliminating, the time
19 that this Board will have to take in making the determinations that
20 the Atomic Energy Act requires us to make in connection with
21 licensing.

22 One comment with respect to simply an abstract setting
23 of a trial date. Of course, that carries with it lots of other
24 things. I'm sure we can go back with depositions and interrogatories
25 and so forth, and frankly, I am not trying to take an adverse

1 position with the Department because we want this plant licensed.
2 But I frankly think that setting a trial date would be counter-
3 productive to our settlement efforts, not only because it would
4 probably result in the use of valuable settlement time by counsel;
5 it would also tend to create an atmosphere that I don't think is
6 conducive for the furtherance of the source of settlement
7 discussions that we now have underway.

8 MR. GLASER: It certainly would be putting some pressure
9 on you, wouldn't it?

10 (Laughter.)

11 MR. SAMPELS: I will tell you one thing I suggested for
12 the thirty days. I will try to explain that because that was my
13 last comment.

14 We do not wish to be an antagonist with respect to a
15 precise date where the world comes to an end or something must
16 happen. We think the fact that the Board has been sensitive to
17 the avoidance of licensing delays has had a very positive influence
18 on all the parties to date in the settlement discussions that
19 we have.

20 I think the fact that the Board has demonstrated an
21 interest in being kept apprised of what we are doing has created
22 a positive atmosphere in which the settlement discussions have
23 gone forward. And I think the Board should continue to keep such
24 a positive interest in the status of settlement negotiations. And
25 to the extent it is not unseemly to admonish, including Texas

1 Utilities, to pursue vigorously and in good faith settlement
2 efforts.

3 But I think that if we have another status report in
4 thirty days, the kind of pressure, if you will, is there.

5 MR. GLASER: How does that serve the public? I guess
6 I don't know how it serves the public interest. That is why I am
7 asking the question.

8 MR. SAMPELS: It serves the public interest, we believe

9 MR. GLASER: My question is how does that serve public
10 interest?

11 MR. SAMPELS: I don't think setting a trial date per
12 se serves the public interest. I think giving the settlement the
13 opportunity to work serves the public interest; and we are inter-
14 ested in pursuing vigorously everything that we can pursue to
15 make the settlement work at the earliest possible time.

16 MR. GLASER: Does your client have a schedule for
17 continuing discussions with the staff on the licensing conditions?
18 Are you going to further discussions?

19 MR. SAMPELS: Absolutely.

20 MR. GLASER: Do we have a schedule for next week?

21 MR. SAMPELS: We have a schedule this afternoon, not
22 only with respect to the issues but to outline dates on which
23 we will meet next. I have also indicated earlier that I talked
24 to Bob Fabricant earlier this morning and expressed a desire on
25 our part to talk with him so that we could further our discussions

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with them. So we are not hesitating to go forward, and we are prepared to go forward if the Board believes that further extensions would be warranted.

We are saying we are not being an antagonist with respect to this because we want this conference to work. In fact, we believe that will facilitate the delay, will facilitate that as well as the licensing.

CHAIRMAN MILLER: Yes, Ms. Cyphert.

MS. CYPHERT: Mr. Chairman, I just thought as a conclusion, at least to clarify, the Department has, as I think you will note in the first status report that we put together, we went at the process of trying to come to grips with the settlement with a great deal of vigor. It was not put on the back burner. It was not a matter of secondary concern. It was a matter of primary focus.

During that period of time we were operating under a trial date deadline by the Board, and I think I can represent to you in perfect candor that almost all of our time during that period was devoted to the settlement process. We are prepared to go to trial. The time, and the additional time if one is to be granted by this Board, will be used to pursue settlement if that is possible.

Our trial preparation is virtually complete, so that the public interest is served by having a trial date certain. It is not going to damage our ability to negotiate. It will not,

1 I think, impair our ability to come to an agreement to continue
2 to look at the issues. But a trial date I think will serve to
3 provide at least a road map of where to go next, if in fact a
4 settlement is not possible in this case, and that is it.

5 And I would counsel with possible regard to consider the
6 fact that nothing is lost by setting the trial date, and perhaps
7 something can be gained.

8 CHAIRMAN MILLER: Who would have the burden of going
9 forward or the burden of proof in the event that there were a
10 trial date on these issues, Ms. Cyphert?

11 MS. CYPHERT: As I understand the statute, the Department
12 does and the NRC staff.

13 CHAIRMAN MILLER: We're ready for trial?

14 MS. CYPHERT: That is correct, Your Honor.

15 CHAIRMAN MILLER: So in the event that we would have
16 a trial, we would not lose much time with trial preparation
17 because the Department would go first and is ready.

18 MS. CYPHERT: That is correct.

19 CHAIRMAN MILLER: Thank you.

20 Anything further before we take a short recess?

21 MR. CHANANIA: Yes. I would care to make a few comments.
22 One is that I perceive -- first, let me start off by saying
23 something a little bit differently.

24 I basically concur with things that Mr. Sampels has
25 indicated, particularly as to the weight of the Board's eyes on

1 our backs as we go down the settlement path.

2 CHAIRMAN MILLER: We're very poetic today.

3 (Laughter.)

4 MR. CHANANIA: I will try anything.

5 (Laughter.)

6 CHAIRMAN MILLER: We're doing all right now. Don't
7 crowd it.

8 (Laughter.)

9 MR. CHANANIA: Maybe I should just sit down.

10 (Laughter.)

11 CHAIRMAN MILLER: No. I would like to hear you.

12 (Laughter.)

13 MR. CHANANIA: The difficulty that we have, and we do
14 feel our representation of the public interest very keenly, is that
15 to the extent that a trial date was set and we were to have to
16 devote our resources in a split fashion, it would indeed be counter-
17 productive for the staff.

18 We feel as though settlement has been pursued very
19 vigorously without -- particularly this last month -- without the
20 weight of a trial date actually being set, and we don't really
21 perceive how, to the extent one can define it, the public interest
22 is served by setting the trial date. It appears that the Justice
23 Department is ready to go if and when that occurs.

24 I would also like to point out that there is a Commission
25 decision which addresses some of the issues which have been raised

1 this morning in the matter of Louisiana Power and Light Company
2 and Waterford case, 6 AEC 619. The date is -- I'm not sure I
3 see the date now. Yes, September 28, 1973.

4 Toward the end of the decision they discuss the public
5 interest, at least as the Commission perceived it then, vis-a-vis
6 settlement, and the hearing which would occur after settlement
7 efforts had been pursued. So I would just point that out for
8 the record, and perhaps you would care to look at that case in
9 your deliberations.

10 CHAIRMAN MILLER: Was that Waterford I or Waterford II?
11 Waterford I, I guess.

12 MR. CHANANIA: I don't know whether it is either one
13 of those, to be honest. It may be a third decision. It sounds
14 like it is probably Waterford I, if anything.

15 CHAIRMAN MILLER: Yes, Mr. Spiegel.

16 MR. SPIEGEL: I would just add or try to add a little
17 detail to what we are talking about when we use the word the
18 public interest issues. The Department of Justice quite properly
19 is focusing on the question of interstate commerce in an effort
20 to sell and resell energy in interstate commerce in order to
21 avoid FERC jurisdiction.

22 Now, in the background of the settlement I'm not sure
23 the parties have at faced up to the real nut, and I'm going
24 along with the extension of time because I think we are trying
25 to settle. But the big nut of it is that I see no showing that

1 it is in the public interest to bifurcate the jurisdiction; that
2 is, why should the Federal Energy Regulatory Commission regulate
3 up to one middle point of an integrated system in Texas, and
4 presumably the Texas PUC the other?

5 We've indicated that we might go along if there is
6 some agreement between the two commissions as to how they are
7 going to operate and regulate this integrated whole, or if there
8 is some showing or agreement that would show both how there is
9 to be coordinated operation between the Southwest outside of
10 ERCOT and ERCOT. That is, in other words we're dealing with more
11 than just these private interests of the utility companies.
12 There are probably hundreds of small municipals and cooperatives
13 that are caught up in this complex who need to see a coordinated
14 operation between the Southwest and Texas. There has been really
15 no showing as to what that is to be and whether the D.C., as they
16 propose it now, is going to be sufficient to handle that.

17 So these issues are not fully resolved and whether they
18 are resolved in a hearing in this case or whether they're going
19 to be resolved at FERC, I haven't addressed that because I assume
20 that what these people want is a complete agreement with all
21 commissioners, including the SEC, and whether we are meeting
22 with standards or operations, which standards go not just to the
23 holding companies themselves but to the other utility entities
24 interconnected.

25 So she is touching -- the Department of Justice is

1 touching on perhaps the nerve end, but the larger public issue
2 is there. And I really hope -- I have been saying it, and perhaps
3 the best-known utility company lawyers haven't been taking it
4 seriously enough, but it is an issue. In other words, when this
5 case is over, we want the small utilities like Brownsville to
6 be able to do business with anybody in Texas or up in the Southwest,
7 including Texas Utilities. We want to be able to call them up,
8 as their counsel has indicated, and it would be available. So
9 we are looking to resolutions of what comes out by way of total
10 coordination and a sensible regulatory jurisdiction framework.

11 CHAIRMAN MILLER: You would be given the same opportunity
12 to brief insofar as it wouldn't be clear as to the primary function
13 of NRC in this kind of a proceeding to achieve both the matters
14 normally before our Licensing Board and antitrust procedures
15 and other larger purposes you might have in mind.

16 MR. SPIEGEL: Yes. That is the difficulty of counting
17 out which is your jurisdiction. I just wish there was some way
18 the SEC, the FERC and the NRC would form a joint body and resolve
19 the whole thing.

20 (Laughter.)

21 MR. SPIEGEL: Otherwise you know what is going to
22 happen. All lawyers are cautious. They will throw every issue
23 in the case and say okay, you fellows unscramble it.

24 Thank you, sir.

25 CHAIRMAN MILLER: Thank you.

1 Anything further before we recess?

2 Very well. We will take about ten minutes.

3 (Brief recess.)

4 CHAIRMAN MILLER: All right. We will come to order,
5 please.

6 The Board has determined to grant the requests for
7 extension of time to continue settlement negotiations, and hope-
8 fully we can make so much as possible. We, therefore, have
9 decided that we will ask for a status report in writing on the
10 progress of negotiations on or before 4:00 p.m. on Friday, July 11,
11 1980. Then we will hold a prehearing conference which will go
12 into the status of the proceedings, including but not limited to
13 the negotiations on the following Monday, July 14 at 10:00 a.m.,
14 hopefully in this courtroom.

15 Secondly, we will deny the motion of the Department of
16 Justice to establish a trial date and other procedural dates;
17 but we will grant the Department leave to renew such motion and
18 request at the prehearing conference on July 14.

19 There are other motions pending, but I doubt that it
20 would be worth taking the time and effort now while the negotiations
21 are proceeding and proceeding rather well.

22 We do have a letter from Mr. Chanania, June 6, 1980,
23 pointing out that Mr. Stephen H. Lewis, who has entered his
24 appearance on behalf of the staff, is a nephew of Mr. George Spiegel.
25 We ourselves see no conflict as to the matters discussed in the

1 letter, but do any counsel have a problem, conflict or otherwise,
2 with the appearance and participation in these consolidated
3 proceedings of Mr. Stephen H. Lewis, a member of the NRC staff
4 and a nephew of Mr. Spiegel of the firm of Spiegel and McDiarmid,
5 who are attorneys for the city of Brownsville and of course appear
6 at other NRC proceedings?

7 Is there any objection or any problem?

8 MR. BAUKNIGHT: We received the letter from Mr. Chananian
9 only a day or so ago. We would like an opportunity to consider
10 the matter and discuss it with staff.

11 CHAIRMAN MILLER: All right. You may have such an
12 opportunity. Please advise the Board and parties in writing by
13 letter or otherwise of your conclusion, whatever it might be,
14 after you have had a reasonable opportunity.

15 MR. BAUKNIGHT: Yes, sir, we will do so.

16 CHAIRMAN MILLER: Or anyone else who wishes to consider
17 the matter will also be given the same opportunity.

18 MR. SAMPELS: We would like the same opportunity.

19 CHAIRMAN MILLER: Very well.

20 Is there anything else that would be useful to take
21 up at this time? The motions seem to deal with various aspects
22 of discovery or motions to produce or not produce and what not.
23 In view of the present status of the negotiations, I take it that
24 there is no necessity at any rate, unless someone feels to the
25 contrary.

1 We will point out that no one can guarantee the ultimate
2 outcome of the negotiations, especially in multi-party complex
3 matters such as this. There may well be other issues or parties
4 which it won't be necessary to examine in a trial-type setting.

5 We, therefore, ask all counsel to keep this in mind
6 throughout your negotiations or appearance before the Board; and
7 we will meet with you in July to have in mind the fact that the
8 Texas Utilities Company and others are sensitive to the timeliness
9 of these proceedings. So we do not want this Board, and you as
10 parties don't want to delay any matters that would otherwise be
11 impacted by our NRC antitrust proceedings.

12 Fortunately, we have found out that the Department of
13 Justice is and will be ready for trial, which I suppose will be
14 the first two or three weeks of trial, will be used by the Depart-
15 ment and its witnesses, which gives us some kind of lead time
16 if we fix a trial date at our July 14th conference. But nonetheless,
17 we think in fairness to all parties and in fairness to the public
18 interest, we must have in mind the possibility of a trial, at
19 least some issues and some parties, as to those matters after you
20 have had the full opportunity to achieve, and which you now have
21 very substantially achieved many agreements.

22 But when it comes to that point, we wouldn't hesitate
23 to set a trial date rather expeditiously. So please have that in
24 mind. We are not trying to interfere in any way or delay negotia-
25 tions which we commend and which we certainly want to cooperate

1 with. But have that trial setting factor in mind insofar as it
2 may be necessary for whatever parties or issues do remain.

3 Is there anything further at this time?

4 Thank you for coming, and we are now adjourned.

5 (Whereupon, at 11:45 a.m., the prehearing was adjourned.)
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NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the

in the matter of: Houston Lighting and Power Company (South Texas)
Texas Utilities Generating Company (Comanche Peak)

Date of Proceeding: June 10, 1980

Docket Number: 50-498A, 499A, 50-445A, 446A

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the original transcript thereof for the file of the Commission.

Marilyn Shockey

Official Reporter (Typed)

Marilyn Shockey

Official Reporter (Signature)