

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :

HOUSTON LIGHTING & POWER : NRC Docket Nos. 50-498A

COMPANY, PUBLIC SERVICE BOARD : 50-499A

OF SAN ANTONIO, CITY OF AUSTIN, :

CENTRAL POWER AND LIGHT :
COMPANY :

[South Texas Project, Unit :
Nos. 1 and 2] :

TEXAS UTILITIES GENERATING : NRC Docket Nos. 50-445A

COMPANY, et al. : 50-446A

[Comanche Peak Steam Electric :
Station, Units 1 and 2] :

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Commission Hearing Room,
Fifth Floor,
4350 East-West Highway,
Bethesda, Maryland,

Monday, 15 September 1980.

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

BEFORE:

MARSHALL E. MILLER, Esq., Chairman
MICHAEL L. GLASER, Esq., Member
SHELDON J. WOLFE, Esq., Member

APPEARANCES:

On behalf of the NRC Staff:

FREDERIC D. CHANANIA, Esq.,
MICHAEL B. BLUME, Esq.,

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1 APPEARANCES (Continued)

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4 Washington, D. C. 20036, on behalf of South Texas
5 Electric Cooperative, Inc., and Medina Electric
6 Cooperative, Inc.

7 GEORGE SPIEGEL, Esq., ROBERT JABLON, Esq., and
8 MARC POIRIER, Esq., Spiegel & McDiarmid, 2600
9 Virginia Avenue, N.W., Washington, D. C. 20037,
10 on behalf of Public Utilities Board of Brownsville.

11 ROBERT FABRIKANT, Esq., and DAVID A. DOPSOVIC, Esq.,
12 United States Department of Justice, Antitrust
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15 MERLYN D. SAMPOLS, Esq., Worsham, Forsythe & Sampels,
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17 and

18 JOSEPH B. KNOTTS, JR., Esq., Debevoise & Liberman,
19 1200 Seventeenth Street, N.W., Washington, D. C.
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21 Company.

22 MICHAEL I. MILLER, Esq., and DAVID M. STAHL, Esq.,
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24 Suite 4200, Chicago, Illinois 60603, on behalf of
25 Central and Southwest Corporation

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P R O C E E D I N G S

(10:00 a.m.)

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3 CHAIRMAN MILLER: The conference with counsel will
4 come to order, please.

5 For the record, we will ask all of you to identify
6 yourselves and your associates; and we will ask for you to
7 update us. We appreciate all of the reports that have been
8 coming in. In order to sort them out, counsel may be preparing
9 for themselves an order of appearance and enlighten both the
10 Board and let the record reflect what has transpired since I
11 last talked to you while you were negotiating briefly Friday
12 and we extended the time until 9:00 this morning to file the
13 various documents.

14 Staff?

15 MR. CHANANIA: Good morning, Mr. Chairman. My name
16 is Fred Chanania. I represent the NRC Staff. With me at
17 counsel table this morning is Mr. Michael Blume, also of the
18 NRC Staff.

19 MR. JOHN: Good morning. My name is Douglas John.
20 I am here on behalf of South Texas Electric Cooperative, Inc.,
21 and Medina Electric Cooperative, Inc.

22 MR. SPIEGEL: My name is George Spiegel, and I am
23 here on behalf of the Public Utilities Board of Brownsville.
24 With me is my associate, Marc Poirier, and my partner, Robert
25 Jablon.

1 MR. FABRIKANT: Good morning, Mr. Chairman. My name
2 is Robert Fabrikant. I represent the Department of Justice.
3 With me at counsel table is Mr. David Dopsovic, also of the
4 Department of Justice.

5 MR. SAMPELS: Good morning, Mr. Chairman. I am
6 M. D. Sampels, representing Texas Utilities Company System
7 with Mr. Joe Knotts.

8 MR. MILLER: Good morning, Mr. Chairman. My name
9 is Michael Miller, representing Central and Southwest Corpora-
10 tion and its subsidiary operating companies. With me at
11 counsel table is my partner, David Stahl.

12 MR. COPELAND: Greg Copeland from Houston Power and
13 Lighting Company. With me is Mr. Lon Bouknight.

14 CHAIRMAN MILLER: Thank you.

15 MR. BALOUGH: Richard Balough, representing the City
16 of Austin.

17 MR. WOOD: John Wood, representing the City Public
18 Service Board, San Antonio, Texas.

19 CHAIRMAN MILLER: Have each of you had a chance to
20 read the things you said you hadr't had a chance to read when
21 we got your missives last week?

22 MR. BALOUGH: Yes.

23 CHAIRMAN MILLER: But you still have to talk to your
24 City Councils?

25 MR. BALOUGH: That's correct.

1 MR. BURCHETTE: Good morning, Mr. Chairman.

2 Bill Burchette, with the law offices of Northcutt Ely, repre-
3 senting Tex-La Electric Cooperatives.

4 CHAIRMAN MILLER: Thank you.

5 Is there anyone else, now, you hasn't noted his or
6 her appearance for the record?

7 (No response.)

8 CHAIRMAN MILLER: All right, we will ask now first
9 of all if the parties and counsel would be good enough to
10 advise the Board, and have the record reflect, the present
11 status of the negotiations which certainly seem to have a
12 very optimistic note as we have been reading them rather
13 rapidly since you filed them with us.

14 Who wishes to go first in that regard?

15 MR. CHINANIA: Mr. Chairman, perhaps I might go first.

16 CHAIRMAN MILLER: Mr. Chinania of the Staff will
17 proceed, please.

18 MR. CHINANIA: I think that our status report this
19 time omitted many of the detailed meetings and phone calls
20 and consultations that we have otherwise put in in our status
21 reports for a good reason. We have concluded a settlement
22 with the Applicant in both proceedings, and are in a position
23 to advise the Board that, upon approval of the two respective
24 sets of settlement license proposed settlement license
25 conditions, that we could advise the Board that they would,

1 upon adoption, not create or maintain a situation inconsistent
2 with the antitrust laws -- at least the licensing of the plant
3 would not.

4 As far as the City of Austin and San Antonio are
5 concerned, we have indicated on our status report that because
6 of the press of time and the last-minute nature of things,
7 their counsel had not been able to view a final version of the
8 settlement of proposed license conditions for the South Texas
9 Project; but that I have received oral assurances that at
10 least there was a tentative agreement to those license condi-
11 tions, subject of course to their obtaining their final
12 necessary approvals, in one case from the City Council.

13 MR. GLASER: Mr. Chanania, may I interrupt a moment?

14 MR. CHANANIA: Certainly.

15 MR. GLASER: Your footnote on page 1 of the staff's
16 status report on settlement indicates that stipulations have
17 been executed by all parties in the Comanche Peak proceeding,
18 and all parties to the South Texas except for the City of
19 Austin and the City of San Antonio.

20 The Intervenors in the cases have not executed
21 these stipulations have they?

22 MR. CHANANIA: That's correct. And I intended to go
23 on and correct that mistaken word in the footnote indicating
24 that indeed, as we mentioned in the body of our status
25 report, that the Intervenors had not been able to see a final

1 version and of course then could not concur or disagree. And
2 as you know, we have suggested that it might be appropriate
3 for the Board to permit them some additional time in order to
4 be able to come to that determination.

5 So my reference in that paragraph is really to
6 San Antonio and Austin.

7 MR. GLASER: It's the Applicants for the licenses,
8 right?

9 MR. CHANANIA: That's correct.

10 MR. GLASER: It's all the parties who are present
11 owners of the plant.

12 MR. CHANANIA: That's correct. And I don't believe
13 that I have any other matters to bring to the Board's attention
14 at this point. I will certainly be able to answer questions,
15 if there are any.

16 (Board conferring.)

17 MR. GLASER: At this point, I think we have your
18 report, and your report at least I think agrees with the
19 reports of the other Applicants, and I don't think Mr. Sampels
20 would have anything to add, or Mr. Copeland, on behalf of their
21 respective clients, or Mr. Miller. If I am wrong, we will
22 hear from them now.

23 MR. SAMPELS: Only a point of clarification,
24 Mr. Glaser. That is, the only parties, including Intervenors,
25 in the Comanche Peak proceeding are the Staff of the Nuclear

1 Regulatory Commission, the Department of Justice, Tex-La of
2 Texas, Inc., the operating subsidiaries of Central and
3 Southwest Corporation, as well as Central and Southwest
4 Corporation itself. Each of those parties have executed
5 stipulations. There are no parties in the Comanche Peak
6 proceeding -- there are no Intervenor in the Comanche Peak
7 proceeding that have not executed stipulations which confirm,
8 among other things, that the issuance of the license for the
9 operation of Comanche Peak under the conditions attached to our
10 settlement report will not create or maintain the system
11 consistent with the antitrust laws; and that each of the
12 parties and each of the Intervenor confirm that no further
13 hearing in the Comanche Peak proceeding is necessary; and that
14 any request for hearing by the Department of Justice and others
15 has been withdrawn.

16 I simply wanted to make that point of clarification.

17 MR. GLASER: Thank you. We did note that. You are
18 quite correct.

19 CHAIRMAN MILLER: Anyone else, now, on behalf of the
20 utilities?

21 MR. MILLER: Mr. Chairman, on behalf of Central and
22 Southwest and its operating company subsidiaries, we are in
23 full agreement with the statements made by both Mr. Chanania
24 and Mr. Sampels with respect to resolution of the dispute, and
25 we wholeheartedly support the entry of the license conditions

1 that are attached to the status report of the NRC Staff.

2 As this Board is well aware, the settlement agree-
3 ment which was distributed to the Board I believe several
4 months ago provides for certain rights for my client in the
5 unlikely event, as it now appears, that the settlement should
6 go awry. That position of Central and Southwest is spelled
7 out in some detail in our written comments, and I hope we can
8 repeat them here when the Board does get to the question of
9 the status of settlement vis-a-vis other parties to the
10 proceeding. We do wish to be heard on that, as well.

11 CHAIRMAN MILLER: Very well. Any one else, now,
12 before we get to the so-called "other parties"?

13 (No response.)

14 CHAIRMAN MILLER: Very well.

15 MR. JOHN: I will go first, Mr. Chairman, on behalf
16 of the TEC/M&C. It wasn't until this morning that I had a
17 chance to receive the status reports of the utilities and to
18 look over the settlement conditions attached to both Comanche
19 Peak and South Texas reports.

20 I haven't yet had a chance to talk to local counsel
21 in Austin and my clients. I think we will need the additional
22 time Mr. Chanania referred to, and which is referenced in his
23 report.

24 I am encouraged that settlement has been agreed to
25 and I am enthusiastic about it. I have no reason to believe

1 there will be a major problem, but I certainly have to ask that
2 the Board bear with us here and give us some additional time
3 to look at this.

4 There was a letter that is in the related proceeding
5 in the FERC that gave us some insight into what the conditions
6 will look like. This was circulated on Friday, and I did have
7 a chance to look over that. But again, there have been some
8 major changes, I think, made in this latest set of proposed
9 licensing conditions for the South Texas Project, and these
10 are matters that I believe I will have to take up with my
11 co-counsel and with my clients. I think three or four days,
12 perhaps the end of this week, would be an appropriate length
13 of time for that.

14 I will be happy to submit comments in writing to the
15 Board and all parties late this week, if that would be
16 acceptable.

17 CHAIRMAN MILLER: In other words, you are asking
18 then for time until, say, the 22nd of September in which to
19 advise the Board and parties of your client's position?

20 MR. JOHN: That should be sufficient.

21 CHAIRMAN MILLER: We will hear some dates from others,
22 but we will note that as being your recommendation.

23 MR. JOHN: Fine.

24 (Board conferring.)

25 CHAIRMAN MILLER: Mr. Spiegel, are you next?

1 MR. SPIEGEL: I am still reviewing the proposed
2 settlement agreement, the proposed conditions. We are still
3 trying to obtain the documents that the Board ordered to be
4 produced some week or two ago.

5 CHAIRMAN MILLER: Which documents do you not have,
6 sir?

7 MR. SPIEGEL: These are the so-called "settlement
8 effective documents."

9 CHAIRMAN MILLER: What is the status of copies being
10 furnished to Brownsville?

11 MR. SPIEGEL: I must say that we have had an
12 opportunity to look at the TU documents at the Department of
13 Justice. I understand that Houston Lighting and Power is
14 reluctant to provide us the copies until we stipulate the
15 issues that they think we are going to go to trial on, if I
16 stated it correctly. From CP&L, my understanding is that they
17 plan to give it to us, but they have not yet given it to us.

18 CHAIRMAN MILLER: Well, let me inquire of counsel.
19 Let the record show what copies have or have not been furnished
20 to Brownsville.

21 MR. STAHL: Chairman Miller, on Friday afternoon I
22 mailed out to Mr. Spiegel copies of all of the documents that
23 were originally withheld from Brownsville by Public Service
24 Company of Oklahoma, Central Power and Lighting Company, and
25 West Texas Utilities Company, as well as Central and Southwest

1 Corporation under the so-called "settlement privilege."

2 CHAIRMAN MILLER: First of all, could you identify
3 that for the record so that we can now know what documents we
4 are talking about?

5 MR. STAHL: These consist predominantly of documents
6 that related to negotiations between Central Power and Light
7 Company and the Public Utilities Board over a transmission
8 services agreement, which documents were prepared approximately
9 14 months ago; as well as documents generated by a task force
10 of individuals from four Central and Southwest operating
11 companies who were looking at methodologies of determining
12 wheeling rates when settlement was being discussed approximately
13 14 months ago.

14 CHAIRMAN MILLER: As I understand, now, those have
15 been mailed to Brownsville and its counsel?

16 MR. STAHL: Those have been mailed to Brownsville,
17 the Department of Justice, and the NRC Staff on Friday
18 afternoon.

19 MR. SAMPELS: The Texas Utilities Company made
20 available to the NRC Staff and the Department of Justice the
21 documents that the Board ordered us to produce. The duplicating
22 costs for that effort were approximately \$2,200. We suggested
23 to Mr. Spiegel that, rather than require us to incur the
24 cost, or perhaps rather than ask him to incur the cost, that
25 we consented to his review of the documents that we had given

1 to either the Staff or the Department of Justice.

2 CHAIRMAN MILLER: Very well. Any other documents?

3 MR. COPELAND: Yes, Mr. Chairman. We have made some
4 settlement documents available to the Staff and the Justice
5 Department in response to their interrogatory request and the
6 Board's order.

7 We received a phone call from Mr. Poirier sometime
8 last week asking for us to produce the documents to them. We
9 were of course very busy working on trying to get this matter
10 settled, and we asked Mr. Poirier to advise us as to the
11 interrogatory requests that he had outstanding to us which
12 would have required us to produce that information.

13 At the same time, I told Mr. Poirier that as far as
14 I was concerned there was nothing left between our clients to
15 litigate in this proceeding. I had sent Mr. Spiegel a letter
16 on the 18th of August asking him to sit down with us and
17 identify the issues, if any, that remained between us to be
18 litigated in this matter.

19 Subsequent to that time period Mr. Spiegel's client
20 approached my client and told my client that they did not
21 intend to litigate against us in this proceeding. I told
22 Mr. Poirier when I talked with him last week that I intended
23 to take the position this morning that there was nothing left
24 between our clients to litigate, and that if he thought there
25 was anything to the contrary that he should call us back

1 immediately and tell me what those issues were, and who the
2 people were that they intended to call and have testify against
3 my client, and what they were going to say. I thought I was
4 entitled to know that if I was going to go into litigation
5 with them -- particularly in light of what his client had told
6 my client. I think that was a reasonable request to make in
7 advance of resolving any further discovery matters with them.

8 We have some discovery matters to resolve against
9 them. The Board ordered them to produce some documents from
10 their expert witness several months ago, and they have never
11 produced the documents. But I don't see any reason to get
12 to settlement documents -- their documents or any other
13 documents -- until we resolve the matter of what is left to
14 litigate in this case.

15 CHAIRMAN MILLER: All right, is there anything further
16 now to report to the Board on the documents before we ask
17 Mr. Spiegel to resume?

18 (No response.)

19 CHAIRMAN MILLER: All right, Mr. Spiegel, I think
20 we have asked of counsel, at any rate, what documents they
21 know of, and the present location or status of them.

22 Now would you be good enough to proceed and tell us
23 your position?

24 MR. SPIEGEL: Well, I am not clear what Mr. Stahl
25 said. I want to clarify: Is it my understanding that they

1 have mailed to us and sent to us all the documents required by
2 the Board's order of August 13, 1980?

3 MR. STAHL: That's correct.

4 CHAIRMAN MILLER: The record may show that counsel
5 responds in the affirmative.

6 MR. SPIEGEL: They're in the mail?

7 MR. STAHL: That's correct.

8 CHAIRMAN MILLER: You probably haven't received them
9 yet.

10 MR. SPIEGEL: There's no doubt they were received in
11 my office, but I came here directly.

12 CHAIRMAN MILLER: Very well.

13 MR. SPIEGEL: And I think that the Board's order
14 should be complied with by Houston, as well. We need these
15 documents not only to prepare for trial, but to intelligently
16 interpret the settlement agreement -- not so much to interpret,
17 but we have a decision to make. We have not agreed to the
18 settlement. We are evaluating our position, and these
19 documents would be helpful in that evaluation.

20 Now as to the other matters that Mr. Copeland spoke
21 of, I don't know why he refers to as "my client." My client
22 has assigned to me the responsibility for this case. I think
23 it has been quite clear for many months that we have some
24 basic positions on which we disagree with Houston Lighting
25 and Pow , much as I happen to like and respect their counsel

1 and their people. I have had many interesting and pleasant
2 conversations with them, but there are some certain basic
3 issues between us.

4 Now there may well be some housekeeping that we need
5 to do on our side, but I think that is another question from
6 the fact that this Board has issued an order. They were to
7 produce. And I think in all the administrative proceedings
8 I have ever been in, when they are ordered to produce for one
9 party they produce for everybody. It almost goes without
10 saying as it relates to public hearings.

11 So I think they should forthwith produce those --
12 because if they are anxious for me to give them my evaluation
13 of the settlement, then I am saying to them: These documents
14 would be helpful.

15 MR. GLASER: Well, let's assume you got those docu-
16 ments. How much time would you need to evaluate the proposed
17 license conditions and report back to the Board about the
18 City of Brownsville's position?

19 MR. SPIEGEL: I would like to suggest a week from
20 Wednesday. I know you have indicated a week from Monday, but
21 I have commitments on the West Coast.

22 CHAIRMAN MILLER: September 24th?

23 MR. SPIEGEL: Yes, that's a reasonable time.

24 (Board conferring.)

25 CHAIRMAN MILLER: Which documents is it, now, that

1 you would need and are requesting as a result of the Board's
2 order in order to evaluate the settlement proposal, Mr. Spiegel?

3 MR. SPIEGEL: Well, it is whatever Houston Lighting
4 and Power has in response to that order. I haven't seen those
5 documents, but I think it would be very helpful --

6 CHAIRMAN MILLER: That is a little vague for the
7 record. We are trying now to get with precision what documents
8 are really necessary to enable you and the other counsel to
9 intelligently and fairly evaluate certain complex settlement
10 proposals. We don't want vagueness, now; we need specificity.

11 MR. SPIEGEL: Probably one of the big things is the
12 question of AC, alternating current, interconnections as
13 compared with the DC interconnections. I think that is a very
14 important aspect.

15 And I think matters having to do with STIS, the
16 South Texas Interconnection Systems, and the TIS, the Texas
17 Interconnected Systems, are important.

18 Matters having to do with transmission are terribly
19 important.

20 Matters having to do with bulk power supply arrange-
21 ments are important.

22 It is those types of things which would be helpful
23 to us in evaluating the settlement. In the interest of candor,
24 we do have difficulties with this settlement, and I can't say
25 that if they hand me over those documents therefore I will

1 approve the settlement. But I really feel that I realistically
2 want them and need them.

3 If we don't settle, then I will want them and need
4 them in terms of deciding what issues have to be tried, and
5 what issues don't have to be tried.

6 MR. GLASER: Mr. Copeland, how many pages of documents
7 does Houston Lighting and Power have to make available? Can
8 you estimate that for us?

9 MR. COPELAND: No, sir. It's not very much. I will
10 make it clear that I am not objecting now to producing those
11 documents.

12 MR. GLASER: Yes, I understand.

13 MR. COPELAND: I do think Mr. Spiegel has misstated
14 what those settlement documents may do for him in terms of
15 evaluating the questions that he raised.

16 With respect to the first issue, AC versus DC, I
17 don't believe that is going to be an issue in this case even
18 if it is litigated, because Brownsville is not proposing to
19 build anything. The only people that are proposing to build
20 anything are the CSW people, and they are quite satisfied with
21 the settlement in that regard.

22 I can assure you that none of the other matters are
23 covered by those settlement documents, so they shouldn't slow
24 Mr. Spiegel down one minute.

25 CHAIRMAN MILLER: How soon can you have them in his

1 hands?

2 MR. COPELAND: I believe we can get them to him this
3 afternoon.

4 CHAIRMAN MILLER: All right, do it as promptly as
5 you can. If it is by this afternoon, fine; tomorrow morning at
6 the latest, so he can have them available to him.

7 Mr. Spiegel's suggestion is, with that presupposition,
8 is that he would need until September the 24th, Wednesday of
9 next week. Is that correct, Mr. Spiegel?

10 MR. SPIEGEL: Yes, sir.

11 MR. JOHN: Chairman Miller, I wonder if I could add
12 a word on that point?

13 CHAIRMAN MILLER: Well, let me be sure, now. I had
14 asked Mr. Spiegel a question -- or had you finished with your
15 answer?

16 MR. SPIEGEL: I think the answer was "yes."

17 CHAIRMAN MILLER: I didn't want to cut you off.
18 Counsel has something to add, but you have the floor at the
19 moment, Mr. Spiegel. We want you to cherish that right,
20 because we don't always give it to you without interruption.

21 MR. SPIEGEL: Well, I think there was another matter
22 that was brought up that should be handled separately. That is,
23 we have a motion to require Central Power and Light to answer
24 interrogatories that are related to --

25 CHAIRMAN MILLER: Yes, that would be a separate

1 matter. You are correct in that assumption. We will hear you
2 and your counsel on that matter after we get through with the
3 discussion of settlement documents.

4 Now, did you wish to add, or supplement?

5 MR. JOHN: I do. My understanding is -- and I am
6 going now back to the original settlement agreement among the
7 parties -- there is provision for other interested entities,
8 possibly, to buy into DCs, so to speak. I am not sure what
9 the deadline schedule is for that, and I would be curious to
10 hear counsel comment on it.

11 But I would like to point out that, true to our
12 historical position, we are considering all alternatives
13 and trying to be as open-minded as we can, and one of the
14 alternatives would be to own a portion of the DC Interconnec-
15 tion System, one of the alternatives for STEC/MEC in the years
16 to come. And for that reason, we too would like to see all
17 the documents that we can that would shed any light upon the
18 cost and feasibility of the DC approach.

19 I would simply like to ask that Houston and TU make
20 available to STEC/MEC copies of any documents that are being
21 produced to Brownsville, and copies that have been sent to the
22 NRC Staff for that purpose.

23 MR. SAMPELS: Well --

24 MR. GLASER: Just a minute, Mr. Sampels. I think
25 that it would be much more productive to allow the Board an

1 opportunity to study the settlement documents first, before we
2 hear comments. If we find, after studying them, that we need
3 another session, we will call a prehearing conference and have
4 the parties make presentations.

5 I don't think we want to get into the substance of
6 what the settlement agreement provides for today. They were
7 only handed to me this morning at 9:00 o'clock. I haven't had
8 a chance to study them. They look like they were the product
9 of a great many man-hours' worth of work, and I think the Board
10 needs a period of time to study them as well.

11 So I don't think we want to get into a date by which
12 the parties are afforded an opportunity to invest in these
13 plants, or any of the other substantive matters to the
14 agreement, Mr. John.

15 I trust that you will read that, and be prepared to
16 submit written comments, as well, on the 22nd, after you have
17 had a chance to study it.

18 MR. JOHN: If I may respond, I think probably we
19 would be able to make a much more definitive statement on the
20 22nd if we had had the chance --

21 CHAIRMAN MILLER: The 24th.

22 MR. JOHN: -- and our people have been examining
23 these data -- not these data, but other data on DC intercon-
24 nections generally quite studiously in the past few weeks.
25 I don't know whether there is anything in these data that would

1 lead us down a different path, but I do think for the sake of
2 a comprehensive review that it probably would be in everybody's
3 interest to let us see these data in the next week or so.

4 CHAIRMAN MILLER: What is it that you wish to see?
5 Describe that for the record, and we will see what counsel
6 representing the other parties have to say, and it may be that
7 we don't have much of an issue.

8 MR. JOHN: All we would like to see is any data that,
9 as I say, shed light -- and these would be the studies that we
10 understand have been conducted back during the course of early
11 settlement discussions by Houston, TU, and Central and Southwest,
12 either in concert or individually, on the feasibility, on the
13 characteristics of the DC interconnections in lieu of an AC
14 interconnection.

15 As I say, our point in wanting to see this is so
16 that we can make a better and more informed judgment on
17 whether we should support a settlement that contemplates the
18 use of a DC interconnection.

19 MR. GLASER: Maybe I am wrong, but I thought I heard
20 this morning that the parties provided those documents to the
21 Department of Justice and Staff.

22 MR. JOHN: That's true. I have been in contact with
23 those entities, but there is the understanding on some of
24 the governmental entities that there is a protective order of
25 some sort that would prevent them from disclosing these, and I

1 thought this would be the appropriate juncture to bring that to
2 the Board's attention.

3 MR. GLASER: Would someone enlighten me on any
4 protective order? I don't recall the Chairman issuing any
5 protective order to that effect.

6 CHAIRMAN MILLER: There is no protective order.

7 MR. JOHN: Then I may be mistaken --

8 CHAIRMAN MILLER: Well, in our order we indicated
9 that if the parties felt, in view our ruling to produce, that
10 a protective order was necessary upon a showing of good cause
11 in issue, we would give them that opportunity. But none has
12 been sought, and consequently none has been issued.

13 MR. JOHN: Do I understand it then that I do have
14 access to the documents provided to Staff counsel and the
15 Department of Justice to make these available to us?

16 CHAIRMAN MILLER: Let's find out right now.

17 MR. COPELAND: I don't have any objection to that,
18 Chairman Miller, but I do want to put out one word of caution
19 for anybody looking at those studies. That is, that those
20 were early-on studies that set forth some early-on views about
21 cost and things like that.

22 In my opinion, for anybody who is really considering
23 getting into the interconnections and buying a part of them,
24 they ought to look at Central and Southwest's very extensive
25 public filing in the FERC proceeding that sets forth the most

1 recent cost information and their estimate as to what it is
2 going to cost over the years, and what kind of money they are
3 going to save by building that.

4 So I think you will get a much clearer picture of
5 what those costs would be by looking at that information,
6 because it is the most recent and the hardest data we have on
7 that subject.

8 CHAIRMAN MILLER: Thank you, Mr. Copeland.

9 Mr. Sampels?

10 MR. SAMPELS: Mr. Chairman, Texas Utilities has no
11 objection to Mr. John's wishes to examine the documents that
12 have been furnished to the Department of Justice or the NRC
13 Staff.

14 I would like to raise one matter here, that there
15 seems to be a prevailing view, from the comment I have heard
16 from Mr. John and Mr. Spiegel, that somehow or another an issue
17 before this Board is the relative merits of AC interconnection
18 versus DC interconnections.

19 I believe that the primary issue with respect to
20 interconnections is before the FERC. I really don't think it
21 is here. I believe that the Board's thrust in granting the
22 motion of the Department of Justice to see the settlement
23 documents was to determine whether or not there existed some
24 fundamental difference between what those documents showed and
25 what the position of the litigants were in this case.

1 CHAIRMAN MILLER: Yes. I think that was at least the
2 primary purpose that the Board had in mind.

3 MR. SAMPELS: And that the Board even put a signifi-
4 cant restriction upon the utilization of those documents, and
5 depositions, and so forth. And I just wanted to remind myself,
6 Mr. John, and others of that.

7 CHAIRMAN MILLER: All right, Mr. John, you have had
8 described to you the existence of several groups of documents,
9 the nonobjection of any of the parties, the availability even
10 beyond that at FERC of certain allegedly updated and refined
11 data. Does this now reveal to you the nature and extent of
12 the information which you and your clients would be considering
13 prior to your written comments of the 22nd of September -- the
14 24th, I'm sorry, the 24th of September?

15 MR. JOHN: I believe so. Thank you.

16 CHAIRMAN MILLER: All right, anyone else now who
17 wishes to be heard on this question of the settlement agreements
18 that have been proffered for examination, which are under study
19 by the parties, the stipulation or stipulations which have
20 been submitted, the comments and explanations offered this
21 morning? Anything further?

22 MR. SAMPELS: Mr. Chairman, I must just make one
23 comment. I am not trying to be argumentative about it, but I
24 believe that it is necessary for me to make a short response to
25 the status report filed by Central and Southwest Corporation.

1 The response simply is, without trying to resolve
2 it -- because I don't think it's necessary: Some of the
3 comments with respect to the interpretation of some of the
4 license conditions made by CSW are contrary to the meaning
5 of the proposed license condition. I disagree with the
6 statement they have made there.

7 I think that also the Staff of the NRC and the
8 Department of Justice likewise disagree with those comments.
9 I simply want to let the record reflect that position.

10 CHAIRMAN MILLER: Very well.

11 Is there anything further on the subject?

12 (No response.)

13 (Board conferring.)

14 CHAIRMAN MILLER: Yes?

15 MR. FABRIKANT: Mr. Chairman, with respect to what
16 Mr. Sampels just said, the Department has no opinion that it
17 wants to place on the record at this time regarding the dispute
18 between Central and TU. That is a dispute between Central and
19 TU at this point. It may be that we will agree or disagree
20 with TU or Central about that, but I think it is important that
21 the record reflect the fact that the Department is not taking
22 any position on that issue at this time.

23 CHAIRMAN MILLER: In order that the record be
24 absolutely clear, then, describe for us the issue upon which
25 the Department takes no view.

1 (Laughter.)

2 MR. FABRIKANT: We spent a lot of time with other
3 parties on a lot of the issues last week, and I can honestly
4 say that this is one issue that I am not sure that either they
5 or we completely understand. That is why I think it is
6 important that we not be committed one way or the other on it.
7 There is a disagreement between the parties -- at least between
8 two of the parties.

9 CHAIRMAN MILLER: What is the disagreement? Your
10 language is so vague that we at the moment, the Board, do not
11 know what you're talking about.

12 MR. GLASER: I didn't receive a copy of Central and
13 Southwest's report, so I am really in the dark.

14 MR. SAMPELS: Could I explain it, Mr. Chairman?

15 CHAIRMAN MILLER: Yes.

16 MR. SAMPELS: It is really a very simple issue and
17 a very simple answer.

18 (Laughter.)

19 CHAIRMAN MILLER: Do you want to give the answer,
20 first?

21 MR. SAMPELS: The only reason I said what I said was
22 that I wanted the record to reflect the strain that Mr. Miller
23 is putting on this has any validity. It is simply this:

24 That there is incorporated in the proposed license
25 conditions a clause that has been referred to from time to time

1 as the so-called "disconnect clause." It provides generally
2 that if a proposed interconnection is denied pursuant to an
3 application filed at the FERC, that the parties seeking the
4 application may be heard, or may petition to be heard further
5 at this Agency with respect to whether the denial for the
6 connection is inconsistent with the antitrust laws.

7 The issue is: Whether or not a denial of a DC
8 application currently pending at FERC by CSW would give CSW
9 the right to come to the NRC and have litigated the issue of
10 whether or not an alternating current interconnection should be
11 required by the NRC.

12 The clause was carefully written by the Texas
13 Utilities Company, with the participation of the Nuclear
14 Regulatory Commission Staff and the Department of Justice, and
15 Houston Lighting and Power, and others, to make it absolutely
16 clear that the only time that an entity seeking interconnection
17 could come to the NRC to be heard was when the FERC denied the
18 interconnection being sought.

19 If the interconnection being sought was a DC inter-
20 connection and that application were denied, that that party
21 could come to the NRC to determine whether or not a subsequent
22 denial by TU to agree to a DC interconnection was inconsistent
23 with the antitrust laws.

24 If that entity wished to change its application or
25 change its request for AC interconnection, it must first file

1 with the FERC an application for an AC interconnection and have
2 that AC interconnection request be denied before it could
3 further petition the NRC, at least within the context of the
4 license condition.

5 I hope I have made it clear.

6 CHAIRMAN MILLER: Is that so-called clause "L(a)" of
7 the conditions?

8 MR. SAMPELS: Yes.

9 CHAIRMAN MILLER: Yes. We do recall that.

10 MR. SAMPELS: The purpose of the whole clause was to
11 permit the regulatory process at FERC to work prior to the time
12 the NRC was asked to litigate any subsequent dispute between
13 the parties.

14 CHAIRMAN MILLER: Yes, Mr. Miller.

15 MR. MILLER: Mr. Chairman, obviously there is still
16 a dispute between TU and Central and Southwest with respect to
17 this issue. I don't want to belabor it very long, because it
18 is my earnest expectation that no one is every going to have
19 the opportunity to decide who is right, Mr. Samples or myself,
20 on the question of our interpretation of that disconnect
21 language.

22 But again for the record, I would just like to state
23 Central and Southwest's view of its rights both under the
24 settlement agreement entered into between TU and Houston, and
25 under the so-called "disconnect provision" that Mr. Sampels

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1 referred to.

2 Under the terms of the settlement agreement, there is
3 an offer of settlement which is currently pending before FERC
4 for disposition through the administrative process of that
5 Agency. That offer of settlement was jointly sponsored by
6 Houston, TU, and Central and Southwest in accordance with an
7 amended application.

8 The application at FERC originally requested an AC
9 interconnection. The amendment to the application that was
10 filed in accordance with the settlement agreement asked for the
11 DC interconnection, which is the reason that we are all before
12 you now discussing settlement.

13 The settlement agreement says that if FERC does not
14 act on the application as amended within one year from the
15 date of execution of the settlement agreement -- which will be
16 June 9th of next year -- that is to be deemed a denial of the
17 application for purposes of an attachment to the settlement
18 agreement which is substantially similar -- if not virtually
19 identical -- to the disconnect provision of the proposed
20 license conditions that are before you.

21 It is our view that in the event there is a rejection
22 of the offer of settlement by FERC, or that FERC does not act
23 by June 9, 1981, under the settlement agreement we would have
24 the right to come back to this Board and state that the
25 application as amended, which includes both AC and DC

1 interconnections, has in effect been denied by FERC and we
2 are therefore entitled under the license conditions to petition
3 this Agency to consider whether the refusal to interconnect
4 AC or DC creates or maintains a situation inconsistent with
5 the antitrust laws.

6 I have been at some pains to spell this out, but as
7 I said at the very beginning it is my earnest hope and
8 expectation as I stand here that this is going to turn out to
9 be an interesting point of contractual interpretation that no
10 one is ever going to have to deal with, because we truly
11 believe that settlement is going to go forward on an expedi-
12 tious basis, and that nobody is going to have to interpret
13 that law.

14 MR. SAMPELS: One final note. The Texas Utilities
15 Company does not have any argument with CSW if it chooses to
16 take a position that it has certain contractual rights with us.

17 I don't agree about this assertion under the contract,
18 but if they wish to take the position that they have certain
19 contractual rights, fine. I have no objection to their taking
20 that position.

21 I don't really believe that it is a matter before
22 this Board to become involved in at all. However, the only
23 thing I wanted to make clear is the interpretation of the
24 proposed license conditions as filed with the Board.

25 MR. GLASER: There it says "a valid order." A valid

1 order of FERC -- I mean, if we were to review that, that would
2 seem to indicate to us that somebody has to issue a written
3 order, either the Commission itself or some Administrative Law
4 Judge, which is final.

5 MR. SAMPELS: That's correct.

6 MR. GLASER: That's what the license condition says.

7 MR. SAMPELS: That's correct.

8 MR. GLASER: And that's what you're asking us to
9 review as a part of the settlement agreement. So we don't need
10 to get into how each party interprets the language, do we?

11 MR. SAMPELS: I agree.

12 MR. GLASER: I wouldn't think that that would be a
13 matter which would concern us in terms of whether or not to
14 decide that the license conditions meet the requirements of
15 this Agency in our statutory duty.

16 MR. SAMPELS: I agree with that. Nor what some
17 settlement agreement or some contract with other parties --

18 MR. GLASER: Well, I have found that when you get
19 two lawyers in the room, they are always going to disagree.

20 (Laughter.)

21 CHAIRMAN MILLER: Two or more.

22 (Laughter.)

23 MR. SAMPELS: Well, I just felt constrained to note
24 it because Mr. Miller's argument is not a new one, and as a
25 matter of fact the language in the proposed license condition

1 was written in light of the petition, and were written to do
2 just the opposite insofar as the license condition is concerned
3 from the position that is taken. I just wanted to make it
4 clear that if he has a right under a contract that he wishes
5 to argue at some subsequent date, we have no objection.

6 CHAIRMAN MILLER: Yes, Mr. Copeland?

7 MR. COPELAND: My name has been conspicuously absent
8 from this conversation. I just wanted to let the Board know
9 that we do line up with TU in this. I have never made much of
10 an issue out of it because I really don't think it is, and I
11 think CSW is supporting the licensing conditions as they're
12 written and asks the Board to go ahead and issue them.

13 I think they realize that if the question ever comes
14 up, it will come up somewhere far down the road and it will be
15 a question at that time as to how you interpret the license
16 conditions. So I just don't believe that it's really something
17 we need to reach today.

18 MR. MILLER: I agree fully with Mr. Copeland's
19 statesman-like comment.

20 I would just like to have the Board inquire of
21 Mr. Fabrikant if all the comments from this table over here
22 have served to identify the issue on which he is not taking a
23 position?

24 (Laughter.)

25 CHAIRMAN MILLER: Do you now know what you do not

1 have a position on, Mr. Fabrikant, on behalf of the Department?

2 MR. FABRIKANT: I think it will be safe to answer
3 that question "yes," your Honor.

4 CHAIRMAN MILLER: Thank you.

5 MR. FABRIKANT: It's not that the Department -- I
6 would like to make this clear -- it is not that the Department
7 does or does not necessarily today have a position on that, it
8 is just that we are not expressing a position at this time.

9 CHAIRMAN MILLER: You may or may not have a position
10 on a subject that you now understand, but you adhere to your
11 views that you're not going to tell them or anybody right now.

12 MR. FABRIKANT: That's right, and I agree with
13 Mr. Copeland in particular that this is not an issue which needs
14 to be resolved today. Hopefully -- and I agree with Mr. Miller
15 that hopefully it will be an issue that we never have to
16 resolve. Thank you.

17 CHAIRMAN MILLER: You're so agreeable today.

18 (Laughter.)

19 CHAIRMAN MILLER: Very well. I think that establishes
20 the record, which is about all we have to do at this point.

21 Is there anything further, now, on this entire
22 subject?

23 (No response.)

24 (Board conferring.)

25 CHAIRMAN MILLER: Is counsel for the proposed

1 Intervenor here?

2 MR. GLASER: The Border Cooperatives?

3 MR. CHOUKAS-BRADLEY: If it please the Board, my name
4 is James R. Choukas-Bradley. I am an Associate with the firm
5 of Miller, Balis and O'Neil for the Texas Border Cooperatives.
6 I have not yet been admitted to the Bar. I recently took the
7 most recent Bar Examination in the District of Columbia, and
8 I am eagerly awaiting the results.

9 I understand that the Rules of Practice of the NRC
10 require that to make an appearance before the Board I be
11 admitted to the Bar. At the Board's pleasure, I would be
12 happy to speak.

13 (Board conferring.)

14 CHAIRMAN MILLER: I think -- my two colleagues
15 disagree with me -- it is my understanding that you don't have
16 to be a lawyer unless you're purporting to represent yourself
17 as a lawyer with a client. In other words, that parties --
18 intervenors and others -- may be represented by agents who do
19 not have to be lawyers.

20 Let me ask, first of all, the Staff and see if we
21 can get more disagreement on this subject. You deal with
22 lawyers, and you are a segment of NRC. What is the Staff's
23 view of this?

24 MR. CHICANIA: Excuse me, Chairman Miller. I really
25 am not in a position to give a definitive statement this

1 morning.

2 CHAIRMAN MILLER: Make it a tentative one.

3 MR. CHANANIA: I think, as I recall the Rules -- and
4 I don't have them with me -- that you are entitled to be, or
5 someone who speaks is entitled to be a representative of a party.

6 I discussed this with the gentleman this morning, and
7 I just wanted him to tell the Board at the outset that he
8 wasn't representing the Texas Border Cooperatives in a legal
9 capacity, just to protect himself. Perhaps I wasn't clear
10 enough in my explanation to him this morning.

11 CHAIRMAN MILLER: Very well. I believe that -- I
12 haven't reviewed the matter for a long time, but I believe
13 that a party, incorporated or unincorporated and the like, may
14 be represented by an agent or a representative, or some such
15 language, if he is not purporting to act as an attorney in
16 the sense that our Rules require the entry of an appearance, or
17 the like.

18 We understand the situation. We are perfectly happy
19 to hear from the -- What is your client? If you were a lawyer,
20 what would your client's name be?

21 (Laughter.)

22 CHAIRMAN MILLER: I have it now for the record.
23 The Texas Border Cooperative? Right?

24 MR. CHOUKAS-BRADLEY: Right.

25 CHAIRMAN MILLER: And there have been various papers

1 filed requesting leave for an untimely intervention, and there
2 have been replies which break down into those who favor and
3 those who do not favor among the existing parties, and I think
4 there has been a final response filed by the Texas Border
5 Cooperatives.

6 Is that the state of the record?

7 MR. CHOUKAS-BRADLEY: That's correct.

8 MR. COPELAND: I am sorry to interrupt, Mr. Chairman,
9 but I did want to make my views known on this point.

10 CHAIRMAN MILLER: Certainly.

11 MR. COPELAND: I believe that I have been through
12 this once before -- not exactly in this situation -- but I
13 do think more is required for somebody to appear here as a
14 representative of a group and say he's their representative
15 without having been specifically designated by them to do so.

16 I think that it would be highly unusual in this
17 circumstance for his client to have retained his law firm, and
18 then for him to be appearing here as a representative in
19 honoring this request.

20 I am not so much worried about this situation as
21 what it might portend for future cases where somebody looks
22 at this situation and says this is a precedent. I do think it
23 is a problem, and I don't want my silence to be taken as
24 agreement with this procedure.

25 CHAIRMAN MILLER: Well, do you have any reason -- you

1 or your client have any reason to challenge the statement of
2 the austensible representative that he is in the role of
3 representative, not an attorney as such at the moment?

4 MR. COPELAND: No, sir. If he is making that
5 representation that he has been designated as a representative
6 by his firm's client, I have no problem with that.

7 CHAIRMAN MILLER: All right, we will inquire then:
8 Can you make such representation to the Board?

9 MR. CHOUKAS-BRADLEY: Yes.

10 CHAIRMAN MILLER: We are not requiring it in writing,
11 although it might be well for you to supplement the record by
12 giving us something in writing, but do you represent to this
13 Board that you are appearing as a duly designated representa-
14 tive of the Texas Border Cooperatives, although not as an
15 attorney?

16 MR. CHOUKAS-BRADLEY: Yes.

17 CHAIRMAN MILLER: Does anyone have any question as
18 to the authentication of the status of the alleged represen-
19 tative of the Untimely Intervenor?

20 (Laughter.)

21 (No response.)

22 CHAIRMAN MILLER: I assume not. So with that,
23 Mr. Spiegel?

24 (No response.)

25 CHAIRMAN MILLER: You may proceed, then, to give us

1 your current views, sir.

2 MR. CHOUKAS-BRADLEY: Thank you.

3 Mr. Chairman, we maintain that we have established
4 the requirements for leave to intervene out of time; that if
5 timeliness were not an issue, that our interests, the impor-
6 tance of the interests, the necessity of our being a party to
7 fully protect our interest, have been established and that we
8 have shown good cause for failure to file a timely petition.

9 The dramatic change in circumstances, particularly
10 with regard to the proposal for DC interconnections for the
11 first time appearing in this proceeding, is such that good
12 cause is shown.

13 We do want to point out that we are not committed
14 to litigate this issue at any cost -- not for the sake of
15 litigation -- but we do want to ensure that our important
16 interests are adequately represented at any settlement proposal
17 which would be subject to your approval and that it is in
18 compliance with the antitrust laws and does not have an
19 anticompetitive impact on our client.

20 So what I am saying, I guess, is that we certainly
21 would hope for a favorable ruling on our petition to intervene.
22 We want you to understand that we prefer a settlement, if
23 possible, but that we must adequately protect our interests.

24 CHAIRMAN MILLER: Let me inquire, now that there
25 have been reasonably specific settlement proposals and

1 stipulations supplemental thereto which are now before the
2 Board, although recently filed, does this have any impact upon
3 the position or positions taken by the Border Cooperatives,
4 the Texas Border Cooperatives?

5 MR. CHOUKAS-BRADLEY: Well, we would need a period
6 of time to adequately review those proposals. I could say
7 that if the Board would prefer to reserve ruling on the
8 Petition to Intervene, that after adequate time to review the
9 proposals we might consider withdrawing the petition.

10 CHAIRMAN MILLER: Well, don't tantalize us with
11 suggestions making our task easier. We will face that eyeball-
12 to-eyeball.

13 However, I think that the Texas Border Cooperatives
14 have taken the position that they cannot and are not presently
15 adequately represented by either the NRC Staff or the
16 Department of Justice in these consolidated proceedings.

17 What, if any, impact do these proposals for settle-
18 ment which have been concurred in by both of those entities
19 have upon that position?

20 MR. CHOUKAS-BRADLEY: Well, our position would remain
21 the same. Again I would have to say, we haven't had adequate
22 time to review the details of the proposal, but I think that
23 would underscore the fact that our interests are not the same
24 as those of the Department of Justice or the NRC Staff.

25 CHAIRMAN MILLER: And that they are not capable of

1 representing your interests insofar as those interests should
2 be represented and considered by the Board in these proceedings?

3 MR. CHOUKAS-BRADLEY: That's correct.

4 CHAIRMAN MILLER: On what basis?

5 MR. CHOUKAS-BRADLEY: Pardon me, sir?

6 CHAIRMAN MILLER: Upon what basis do you make that
7 continued assertion? You have read the positions filed, or
8 the responses filed by the Department and the Staff, haven't
9 you?

10 MR. CHOUKAS-BRADLEY: Yes.

11 CHAIRMAN MILLER: In which they essentially supported
12 the position taken by the Texas Border Cooperatives, did they
13 not?

14 MR. CHOUKAS-BRADLEY: Yes.

15 CHAIRMAN MILLER: Now they are coming before us,
16 along with the other attorneys and parties, and representing
17 that there is a series of instruments, denominated "settlement
18 agreements," which adequately protect the public interest,
19 remove all anticompetitive consequences, and the like. Is that
20 not now a slightly different position than you are now
21 asserting? What is the basis of your continued support of
22 that position?

23 MR. CHOUKAS-BRADLEY: Our assertion is that they
24 are now representing that the proposals are in accord with the
25 public interest, but they have made no claim that they are

1 representing the interests of the Texas Border Cooperatives.
2 In their answers supporting our Petition to Intervene, they
3 made quite clear, I believe, that the interests which they
4 represented, while similar to ours in some particulars, are not
5 identical by any means. That was one of the reasons that they
6 did support our petition, that they could not adequately
7 represent the same interests that the Border Cooperatives had.

8 CHAIRMAN MILLER: Is it your position to the Board
9 that the Department of Justice and the NRC Staff can and have,
10 by the positions that they have taken on the settlement
11 agreements, agreed to a situation which could be inconsistent
12 with the antitrust laws, or are anticompetitive in its implica-
13 tions insofar as the Texas Border Cooperatives is concerned?

14 MR. CHOUKAS-BRADLEY: That may be, sir. I'm unable
15 to say.

16 CHAIRMAN MILLER: That is very important. What you
17 are doing, you are challenging at least the conclusions reached
18 by these governmental entities in this particular matter. And
19 if you wish to be heard as to the basis of so stating, I think
20 you should. But this is not a slight or insubstantial matter,
21 or one that depends upon linguistics. We are talking about
22 something pretty basic here.

23 MR. CHOUKAS-BRADLEY: I understand that,
24 Mr. Chairman.

25 CHAIRMAN MILLER: All right, now, if someone on

1 behalf of the Texas Border Cooperatives wishes to tell us in
2 what respect the NRC Staff and the Department of Justice have
3 been derelict in their responsibilities insofar as the antitrust
4 laws or anticompetitiveness of the proposed licensing
5 conditions are concerned, we would sure be happy to hear from
6 you.

7 MR. CHOUKAS-BRADLEY: Well, Mr. Chairman, I reiterate
8 what I said before. That is, that we would need an oppor-
9 tunity to review the details of the proposal. Upon doing so,
10 it is certainly ver; possible that we would find there are no
11 problems.

12 CHAIRMAN MILLER: Well, if you continue to have
13 problems, we expect you to flesh them out beyond mere
14 conclusionary statements, and certainly insofar as the matters
15 I have just indicated to you about the discharge of the
16 responsibilities in the antitrust field by the two governmental
17 entities, and to have them to us no later than the 24th of
18 September.

19 MR. CHOUKAS-BRADLEY: We will certainly do so.

20 CHAIRMAN MILLER: Very well. Thank you.

21 Now in fairness, I think that counsel and the other
22 parties should be entitled to respond, if they wish, to the
23 position taken presently by the Texas Border Cooperatives, if
24 they wish to do so.

25 MR. COPELAND: Yes, sir, I do.

1 CHAIRMAN MILLER: Pardon me. Were you through? I
2 assume that you were.

3 MR. CHOUKAS-BRADLEY: Yes, sir.

4 CHAIRMAN MILLER: Thank you.

5 (Board conferring.)

6 CHAIRMAN MILLER: Is there anything further that you
7 wish to say with respect to your Motion for Leave to Intervene
8 which has previously been filed in writing and has been
9 responded to by the other parties, and by Texas Border
10 Cooperatives?

11 MR. CHOUKAS-BRADLEY: I restate that we preserve our
12 motion for leave to file, but if the Board would prefer, we
13 will reserve the possibility that we would withdraw that motion
14 upon review.

15 CHAIRMAN MILLER: We don't understand exactly what
16 that means. We had supposed that there was a petition for
17 leave to intervene, and that that had been a subject of written
18 responses and of written replies.

19 MR. CHOUKAS-BRADLEY: Yes, sir.

20 CHAIRMAN MILLER: Now you tell us that the Texas
21 Border Cooperatives are now reserving something. If you are
22 really reserving anything, we had better know what it is.

23 MR. CHOUKAS-BRADLEY: The Petition for Leave to
24 Intervene stands, sir. We are simply trying to cooperate and
25 let you know --

1 CHAIRMAN MILLER: As it stands at the moment, we have
2 given you an opportunity until the 24th, a week from Wednesday,
3 if you're going to go into dereliction of duty in those matters,
4 to come forth. We have already heard from the party who seeks
5 to intervene. Unless you have something that you wish to add
6 at this time? Do you have anything that you wish to add?

7 MR. CHOUKAS-BRADLEY: No, sir.

8 CHAIRMAN MILLER: We will await, then, the 24th.
9 You are entitled, or anyone else who wishes to
10 respond will be heard from. You may proceed.

11 MR. COPELAND: Thank you, Chairman Miller.

12 I would just like to say that we don't intend to
13 take up the fight of whether they've filed a good petition in
14 argument this morning. We have made our arguments in our
15 pleadings and we will stand by them.

16 I do have two comments other than that. One is to
17 emphasize and underscore the fact that this appearance here
18 this morning by the Border Co-ops illustrates the very reason
19 why they shouldn't be allowed to intervene in this proceeding.

20 There are a number of parties who have been in this
21 fight for four or five years, who have worked very hard. I
22 have done almost nothing else for the last four to five months
23 except try to settle this case, and in rides the Border Co-ops
24 on a motley-colored horse to attack this settlement proceeding
25 without any basis whatsoever.

1 I think they're too little and too late, and I think
2 it is fair of the Board to inquire of the Border Co-ops as to,
3 if they were going to be in this proceeding and present a case,
4 if they have a plan for interconnection, and if so when they came
5 up with this plan for interconnection, who they presented it to
6 and who refused to interconnect with them. That has been the
7 issue in this case, and I think it is a fair question to put
8 to them.

9 CHAIRMAN MILLER: Anyone else?

10 Mr. Sampels?

11 MR. SAMPELS: One short comment, Mr. Chairman.

12 With respect to Texas Utilities Company, we have been
13 successful, subject to the ruling of this Board, in settling all
14 issues with all parties in the Comanche Peak proceeding. We
15 believe that the granting of the Petition for Leave to Inter-
16 vene to Texas Border Cooperatives would seriously prejudice
17 the rights and interests of Texas Utilities in the issuance of
18 an operating license for Comanche Peak.

19 We do not believe that they have shown good cause to
20 intervene, in any event; but we believe the fact of the
21 settlement itself adds another spectre to why their petition
22 ought to be denied -- because the granting of the petition
23 could delay the issuance of a license to Comanche Peak and
24 thus prejudice the interests of Texas Utilities.

25 At no time has the Border Cooperatives asked any

1 ownership interests of Comanche Peak. In fact, all their
2 witnesses on examination over the past few years have denied
3 that they had any interest in Comanche Peak or the ownership of
4 Comanche Peak. They haven't sought to purchase power. They
5 haven't asked anything of the Texas Utilities Company that has
6 been denied.

7 As a matter of fact, they have not asked anything of
8 us, period, in this proceeding. If they have an interest in
9 what might be going on in the FERC, then of course they are
10 entitled, should they desire, to intervene in that proceeding
11 if they're not out-of-time there.

12 We just don't see, and we have not seen, any color
13 of showing by the Texas Border Cooperatives to intervene at
14 this point in this proceeding.

15 As a matter of fact, I did want to point out that
16 they have intervened, and they did timely intervene, in the
17 FERC petition.

18 (Board conferring.)

19 CHAIRMAN MILLER: Is there anyone further?

20 Yes, Staff? Mr. Chanania.

21 MR. CHANANIA: Mr. Chairman and members of the Board,
22 I believe our views are set forth in our response to the Texas
23 Border Cooperatives petition, and I really don't have anything
24 to add this morning to that. Except that I would like to make
25 a comment, in light of the interchange which went on between

1 Chairman Miller and the representative of the Border Co-ops.

2 In reaching a settlement set of licensing conditions
3 which we submitted to the Board this morning, we of course took
4 into account the views of as many parties as we could possibly
5 canvass, and indeed that extended far beyond the actual parties
6 to these proceedings because of the nature of this case.

7 We have of course consulted with the Border Coopera-
8 tives on -- I don't know whether I should say "several" or
9 "many" occasions, but we are well aware of their views, and
10 took them into account, as we believe we are required to do to
11 discharge our responsibility not only to represent what is
12 loosely called the "public interest," but also to be able to
13 make the representations that we have to the Board in our
14 Status Report as far as what approval of the proposed licensing
15 conditions would mean as far as the Staff is concerned.

16 So I just want the record to reflect that it is not
17 as though we have not spoken with them. I take it that the
18 interchange which went on this morning was related to the
19 specific requirement of 2.714 --

20 CHAIRMAN MILLER: That's correct.

21 MR. CHANANIA: -- and it didn't go beyond that.

22 Thank you, Mr. Chairman.

23 CHAIRMAN MILLER: Thank you.

24 Is there anything further?

25 (No response.)

1 (Board conferring.)

2 CHAIRMAN MILLER: What is the status of the applica-
3 tion or motion of the City of Brownsville regarding either
4 depositions or discovery?

5 MR. SPIEGEL: By letter of August 25th, we had
6 requested Central and Southwest's attorney to voluntarily
7 respond to certain well-defined, and I would say limited,
8 interrogatories based on any communications during the last
9 year relative to or with officials or agents or personnel to
10 the Public Utility Board on the City Commission or the City,
11 and other persons, relative to the desire, or the alleged
12 desire, of Central Power and Light to buy out the Brownsville
13 System; and two related matters: the financing that was
14 engaged in a month or so ago, and an evaluation study which
15 seems to be going on, as I understand it is to be made of the
16 Public Utility Board's Electric, Water, and Sewer System.

17 I had anticipated no difficulty in getting voluntary
18 responses, and we have had a number of friendly discussions
19 with Central and Southwest's lawyers. We were making progress,
20 at least, on the transmission agreement, and I had assumed that
21 they would cooperate fully in order to simplify the problem
22 Brownsville has in trying to reach a settlement agreement.

23 However, they said "no." So we have filed a motion
24 to compel the discovery. I recognize that the case is in -- I
25 won't say "limbo," we're in an interim period here where

1 settlement is being considered -- but I felt it necessary to
2 start the procedure as early as possible so that if we started
3 it later on, in the event there is a trial, they won't say
4 that we should have started it earlier.

5 MR. GLASER: They didn't object on the grounds they
6 were in settlement discussions; they said they weren't going to
7 supply because factual discovery has been cut off, wasn't it?

8 MR. SPIEGEL: That was one of their grounds. They
9 had three grounds, as I recall. We say we've just found out
10 about it lately. And in any event, the interrogatories were
11 continuing interrogatories.

12 Also, I would, if this is to be an argument in the
13 case, I would say you have to recognize the crucial importance
14 of this issue. Here is a company system that is proposing to
15 settle this vast litigation involving all sorts of antitrust
16 questions, most difficult and most crucial, and we feel that
17 they should respond to these questions if they sincerely want
18 a settlement.

19 These questions are not -- we have followed that up
20 with -- again in order not to be accused of foot-dragging -- we
21 served Friday, and some of the parties got it this morning,
22 notice to take the depositions of two named persons whom we
23 believe were in fact -- we believe on the basis of reports
24 that we received, or conversations that we are satisfied have
25 at least the color of validity -- who attended at least one of

1 the conferences on the subject. So we have not yet had their
2 response as to whether we would voluntarily have these people
3 deposed.

4 I might just put in one more suggestions. The whole
5 question of discovery before administrative agencies has
6 blossomed out and bloomed far and wide, far beyond what was
7 anticipated when administrative agencies first got into
8 discovery matters. I know that personally because I think the
9 first discovery at the NRC was one that I initiated myself,
10 and perhaps the first discovery at the FERC was similarly
11 initiated by myself.

12 In those days, we tried to define the thing and get
13 it over quickly, and we found that one of the best mechanisms
14 to use was to have people deposed by the trier of fact, an
15 Administrative Law Judge, or in this case the Board, because
16 it saves a lot of time. You go out of town, you have a lot
17 of lawyers together, they argue about it, he doesn't answer
18 this question, that question, the whole thing gets lost. It
19 is very effective in cutting down and speeding up the process.

20 So I would suggest that if these people --

21 CHAIRMAN MILLER: Are you suggesting that this Board
22 should sit in and rule on the taking of depositions, Mr. Spiegel?

23 MR. SPIEGEL: Yes.

24 CHAIRMAN MILLER: That is done very rarely, whether
25 it be done in a court or before an administrative agency, but

1 saving your time would sure wreck havoc with ours, I can assure
2 you, if we even listened to any such proposals.

3 MR. SPIEGEL: We have found -- Your Honor, I am very
4 serious, now.

5 CHAIRMAN MILLER: I am, too.

6 MR. SPIEGEL: We did this in the Northeast Utilities
7 case involving the Northfield Mountain case. We did it in a
8 number of New England rate case. We found it sped everything
9 up, because the Board, the Judge himself, got to know what it
10 was all about very, very quickly. So you would be surprised.
11 I think it would be helpful to your Honor, too.

12 CHAIRMAN MILLER: Any response?

13 MR. STAHL: Yes, Chairman Miller.

14 I think it might be proper to put this dispute in a
15 little bit of context. As Mr. Glaser pointed out, the
16 principal objection that we lodged against the Brownsville
17 interrogatories was the fact that they came some 5-1/2 months
18 after factual discovery was closed by order of this Board.
19 We were in the middle of settlement negotiations with Houston,
20 TU, Brownsville, and the Staff at the time, and we did also
21 respond to Mr. Spiegel that we thought it would be counter-
22 productive for people to be responding to discovery requests
23 at a time when we were supposed to be talking about settlement
24 pursuant to this Board's directive.

25 The third objection we interposed to those

1 interrogatories was that we thought then, and we still believe
2 now, that the subject matters of those interrogatories were
3 totally unrelated to any issue that has ever been before this
4 Board, and particularly so now that a set of proposed licensing
5 conditions, two sets of licensing conditions, have been
6 proposed to the Board.

7 The interrogatories, as Mr. Spiegel pointed out,
8 relate to certain alleged conversations that certain employees
9 of Central Power and Light Company had with I guess individuals
10 employed by his client, concerning financing the Public
11 Utilities Board was engaged in, concerning a study that was
12 made of the Public Utilities Board's system, and concerning
13 an alleged takeover, or lease or purchase of the Brownsville
14 System by Central Power and Light Company.

15 Now the licensing conditions that we have proposed
16 to this Board relate to interconnections, and access to those
17 interconnections by third parties, and that it seems to me are
18 the central issues that are now before this Board.

19 Mr. Spiegel also alluded to the fact that this is
20 really nothing more than part of our continuing obligation to
21 update our interrogatory responses. We certainly do recognize
22 that we do have that obligation, but these interrogatories are
23 not merely a mop-up operation by Brownsville on the subject
24 matter.

25 In January of '79, Brownsville did file a document

1 request requiring Central Power and Light Company to produce
2 any documents relating to any takeover attempt or purchase
3 attempts of the Brownsville System by Central Power and Light
4 Company, and we did produce all the documents that we had in
5 our possession relating to that.

6 Now we are moving well beyond any purchase or take-
7 over attempts into other matters -- financing questions, system
8 study questions. To show the unrelatedness of the recent
9 request to the earlier request, on Friday we received notices
10 of depositions of two people who had never been deposed before
11 and who had never been the subject of any discovery before.

12 So I think given the fact that the requests come
13 five months after discovery has been closed, and given the fact
14 of really any circumstances under which this discovery can be
15 justified at the present time, that the discovery ought to be
16 denied.

17 I might also point out, the piece of paper we received
18 today from Brownsville, counsel for Brownsville makes the
19 statement that they need this discovery in order to evaluate
20 the license conditions. Well, as I pointed out, there is
21 really no relationship between this discovery and the license
22 conditions.

23 Also, it seems to me that since Mr. Spiegel has
24 accepted the obligation to file his comments on the license
25 conditions by the 24th of September, he himself recognizes that

1 he does not need this discovery in order to make that comment
2 since the depositions themselves are not going to be scheduled
3 until the 23rd or the 24th of September.

4 So I think that that is a patently frivolous argument
5 that Mr. Spiegel makes to justify his discovery, and we would
6 request that all discovery requests be denied.

7 MR. GLASER: Do you intend to file a written
8 opposition to the notice of taking of depositions that
9 Mr. Spiegel filed?

10 MR. STAHL: Well, if I did file something in writing,
11 it would really reflect only what I have said this morning, I
12 believe. I would like the record to reflect that we are
13 filing orally a motion for protective order this morning, and
14 if the Board wishes, we could put something in writing within
15 a couple of days. I personally don't believe it is necessary.

16 MR. GLASER: No, we just wanted to make sure the
17 matter is ripe for our decision.

18 MR. STAHL: We only received those notices late
19 Friday afternoon.

20 CHAIRMAN MILLER: Does the Department of Justice
21 have any position on this?

22 MR. FABRIKANT: No, your Honor, we don't.

23 CHAIRMAN MILLER: By the way, what was the nature of
24 that motion for protective order? I don't think I got all
25 the terms of that.

1 MR. STAHL: That the notices of deposition and the
2 interrogatories that were filed by the PUB on the 25th be
3 quashed by the Board.

4 CHAIRMAN MILLER: That's not a protective order,
5 except in the sense it would protect you from any further
6 obligation.

7 MR. STAHL: A protective order by which we are
8 requesting that the discovery not be had and under any
9 conditions be serviced.

10 CHAIRMAN MILLER: Staff?

11 (No response.)

12 MR. GLASER: The Chairman of the Board of Central
13 Southwest Corporation's not be taken. There was one other
14 officer.

15 MR. STAHL: No, it's Mr. Bill Sales who is the
16 President of Central Power and Light Company at the present
17 time; and Mr. Tyler Russell, who I believe is one of the
18 District Managers of Central Power and Light at San Boneta,
19 Texas.

20 CHAIRMAN MILLER: Anything further?

21 MR. SPEIGEL: I would dispute Mr. Stahl's statement
22 that they had made a full production of all the documents.
23 We have had correspondence on that, and we feel there are still
24 matters outstanding. I believe we had suggested, and I would
25 suggest it now, for the attorneys of Central and Southwest,

1 are prepared to file an affidavit that they have fully
2 complied with all of our documentary requests, we would be
3 satisfied with that.

4 CHAIRMAN MILLER: The problem with that, Mr. Speigel,
5 is that discovery was cut off some months ago. But I think in
6 one of our orders establishing this schedule we indicated that
7 the Board considered discovery as either being concluded or
8 pretty well concluded. I think we did leave a slight opening
9 by our statement that if good cause were shown there might be
10 some limited purpose, because there might have been a few
11 depositions then scheduled. But the Board had concluded that
12 if we proceeded with the evidentiary hearing, that discovery
13 was essentially completed.

14 MR. SPEIGEL: Yes, I have no problem with that.
15 I just say that you have to understand the crucial importance
16 of this issue to Brownsville. It may not loom wide on the
17 great horizons that are involved in this case, you know, 2000
18 miles of interconnecting systems, but for a little town caught
19 at the very southern-most peak, pit, peak --

20 (Laughter.)

21 MR. SPEIGEL: -- surrounded for 200 miles by Central
22 and Southwest, when you get beyond that, what do you have? The
23 Houston Lighting and Power and Texas Utilities, with a magnifi-
24 cent battery of lawyers. This is important to us, because it
25 is our skin we're talking about. If they expect to settle with

1 us, and we have to come out of this proceeding with conditions
2 and agreements that will enable us to survive, if they have a
3 program for taking us over I have to know what that program is,
4 because I need to have agreements and have conditions that
5 will make our system viable, both in terms of transmission
6 interconnections, bulk power supply, and all the other things,
7 before they can expect us to settle.

8 MR. GLASER: Well, Mr. Speigel, I assume that your
9 comments, if any, that you are going to file next week would
10 be directed towards persuading the Board that the proposed
11 license conditions are inconsistent with the antitrust laws.
12 I believe that's where you ought to make your argument.

13 MR. SPEIGEL: There is a problem here on my timing.
14 The Board at this point has not set a date for trial.

15 MR. GLASER: Oh, we have set the case for trial.
16 The date has been set for trial, unless I misread the
17 Chairman's order quite some time ago.

18 MR. SPEIGEL: But this is a kind of an interim
19 period here.

20 MR. GLASER: Well, we haven't suspended the trial
21 date yet.

22 MR. SPEIGEL: I would say, issue the order and we can
23 set the trial date and be provided the information.

24 CHAIRMAN MILLER: Is there anything further?

25 MR. COPELAND: I would just like to pick up on the

1 comment made by Mr. Glaser there. I think that the Board might
2 want to consider whether it would not be appropriate to get
3 back to the procedure that they had suggested two prehearing
4 conferences ago, where if there are parties who still plan to
5 litigate in this proceeding, that they fully advise the Board
6 and all the parties as to what the issues are that remain to be
7 litigated, who their witnesses are going to be, and what their
8 witnesses are going to say, and what their views are on the
9 legal issues. Because I think that that may be very helpful
10 to the Board in deciding whether their comments about these
11 license conditions are well taken, and whether the Board is
12 going to have the hearing.

13 MR. GLASER: We have dates already set, I presume.
14 My understanding is that the order is outstanding, and it is
15 still outstanding, and I think on the 24th of September we might
16 have the views of any parties who believe this proceeding
17 should be litigated. But we do have a date set, and I didn't
18 hear the Chairman indicate that the Board intended to suspend
19 those dates.

20 MR. COPELAND: No, sir.

21 MR. GLASER: Everybody ought to be aware that we do
22 have the dates, and they still stand.

23 MR. COPELAND: I understand that, Mr. Glaser. My
24 only comment was that it seems to be, because of the develop-
25 ments that have taken place since that order was established --

1 I am not asking you to suspend the trial date. I think it
2 ought to stay just where it is. But I really believe that what
3 you are going to get is a lot of verbage from lawyers about why
4 they don't like the license conditions.

5 MR. GLASER: They are going to have to cite to us
6 the license conditions -- and I just confess. I have read
7 them, and anyone who files with the Board suggesting that we
8 should not approve these conditions has the burden of showing
9 us that it is inconsistent with the antitrust laws. That is
10 what the issue is; not whether or not somebody can survive,
11 because the antitrust laws are designed to help competition,
12 not competitors. I think that is fundamental.

13 CHAIRMAN MILLER: Is there anything further?

14 (No response.)

15 CHAIRMAN MILLER: Very well. We will expect to hear
16 from those who wish to be heard from in writing on the 24th of
17 September, and a pretrial conference order will be issued
18 following the submission of whatever parties wish to submit in
19 writing.

20 Do you have a question?

21 MR. CHANANIA: Mr. Chairman, just a comment. I think
22 on behalf of all the parties I would like to thank the Board
23 for giving the parties an opportunity, certainly which might
24 be viewed as "under the gun," in terms of the trial dates and
25 the necessity to move along, to be able to reach a settlement at

1 least insofar as has been reached today, and we do thank you.

2 CHAIRMAN MILLER: Well, we reciprocate by thanking
3 all parties and their counsel for the patience that they have
4 shown in a very complex matter. We realize fully in antitrust
5 matters, and especially those involving electric utilities
6 where the NRC, and FERC, and others have an interest, are very
7 extensive and very complex.

8 So we do commend all counsel. And I think on this
9 one particular limited area, I think the Appeal Board would
10 concur with that sentiment.

11 Thank you, and we stand in adjournment.

12 (Whereupon, at 11:18 a.m., the prehearing conference
13 was adjourned.)

14 * * *

POOR ORIGINAL

NUCLEAR REGULATORY COMMISSION

This is to certify that the attached proceedings before the
Atomic Safety and Licensing Board

in the matter of: Houston Lighting and Power Co., et al., and Texas
Utilities Generating Co., etal.

Date of Proceeding: September 15, 1980

Docket Number: _____

Place of Proceeding: Bethesda, Maryland

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

Jane Beach

Official Reporter (Typed)

Jane V. Beach

Official Reporter (Signature)