UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

CENTRAL POWER AND LIGHT COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA, SOUTHWESTERN ELECTRIC POWER COMPANY, AND WEST TEXAS UTILITIES COMPANY	)	Docket No. EL-79-8

COMMENTS OF THE DEPARTMENT OF JUSTICE
CONTESTING THE OFFER OF SETTLEMENT

Pursuant to Section 1.18(e)(2) of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission, as amended by Order No. 32, 1/ the Department of Justice ("Department") hereby respectfully files with the Presiding Administrative Law Judge Comments contesting the "Offer of Settlement" in the above-captioned proceeding filed on July 28, 1980, by Central Power and Light Company ("CP&L"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO") and West Texas Utilities Company ("WTU") (collectively referred to as "CSW"), and Dallas Power & Light Company ("DP&L"), Texas Electric Service Company ("TESCO"), Texas Power & Lignt Company ("TP&L") (collectively referred to as "TUCS") and Houston Lighting & Power Company ("HL&P").

I. Background

A significant portion of the electricity consumed in the State of Texas is produced, transmitted and sold by electric utilities which do not operate in interstate commerce. These exclusively intrastate utilities include TUCS and HL&P. TUCS, HL&P and other utilities operating solely within Texas are members of the Electric Reliability Council of Texas ("ERCOT"). Applicants CP&L, PSO, SWEPCO and WTU are all operating subsidiaries of Central and Southwest Company, a public utility holding company. CP&L operates entirely within Texas and is a member of ERCOT. WTU is a bifurcated system: its Northern Division has historically operated in interstate commerce, whereas its Southern Division has operated solely in Texas and is a member of ERCOT. PSO and SWEPCO operate in interstate commerce. Both are members of the Southwest Power Pool ("SWPP"), an interstate coordinated and interconnected group of utilities in Oklahoma, Louisiana and a small portion of Texas, bordering ERCOT's territory.

1/ Procedure for Submission of Settlement Agreements, Docket No. RM78-16 (Issued June 13, 1979).

Beginning in 1974 CSW sought the cooperation of TUCS and HL&P in establishing interconnections that would electrically integrate CSW's SWPP subsidiaries and its ERCOT subsidiaries. After TUCS and HL&P declined to accede to CSW's proposal, WTU, on May 4, 1976, energized certain radial ties and began transmitting power from Texas to PSO for resale to customers in Oklahoma. Immediately upon being informed of the interstate interconnection, TUCS and HL&P, in order to avoid FERC jurisdiction, disconnected from CP&L, WTU, each other and other utilities in Texas. While TUCS and HL&P reconnected to one another within a matter of days, these utilities did not reconnect with other utilities in ERCOT until issuance of an order by the Texas Public Utility Commission ("TPUC") nearly a year after the original disconnection. 2/ In addition, the TPUC Order of May 1977 precluded CP&L and WTU from operating in interstate commerce and required any utility operating solely in Texas to obtain prior TPUC or Federal Power Commission approval for future operation in interstate commerce. 3/

In 1978 the Public Utility Regulatory Policies Act ("PURPA") was enacted. Under PURPA, the FERC is authorized, inter alia, to establish interconnections between SWPP utilities and ERCOT utilities without the latter coming under FERC jurisdiction for

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2/ Public Utility Commission of Texas, Docket No. 14, Final Order (May, 1977) and Amended Final Order (July 11, 1977). TUCS and HL&P could have reconnected prior to the TPUC orders without subjecting themselves to the jurisdiction of the Federal Energy Regulatory Commission ("FERC"). See Order Rejecting In Part and Accepting In Part Application For Action Pursuant to Section 202, FERC Docket No. E-9558 (Issued July 21, 1976). As a result of Commission action in Docket No. E-9558, CP&L and WTU's Southern Division are now interstate utilities regulated by the FERC under Section 201 of the Federal Power Act. Even though both TU and HL&P are interconnected, directly or indirectly, with CP&L and WTU, the Commission in Docket No. E-9558 held that TU and HL&P were not interstate utilities. The Commission's order in Docket No. E-9558 was remanded by the Court of Appeals in Central Power & Light Co. v. FERC, 575 F.2d 937 (D.C. Cir. 1978) and currently is under reconsideration by the Commission.

3/ The FERC has participated in a challenge to the TPUC Order in the United States District Court for the Western District of Texas, Civil Action No. A-77-CA-86.

ratemaking purposes. On February 9, 1979, CSW filed an application 4/ in the instant proceeding for approval of four alternating current (synchronous) interconnections ("AC Interconnection" or "AC grid") between ERCOT and SWPP under Sections 202-204 of PURPA. 16 U.S.C. §§ 824i, 824j, 824k (1978). TUCS and HL&P opposed CSW's Application.

On June 27, 1980, in an attempt to settle, inter alia, the instant FERC proceeding and a related proceeding before the Nuclear Regulatory Commission ("NRC"), 5/ CP&L filed an amended application 6/ seeking approval under PURPA of two direct current (asynchronous) interconnections ("DC Interconnections") between ERCOT and SWPP. The Offer of Settlement, which was signed by CSW, HL&P and TUCS, effectuating the proposal set forth in the Amended Application, was filed on July 28, 1980 ("Offer of Settlement").

In addition to the Offer of Settlement, CSW, TUCS, HL&P, the FERC Staff and the NRC Staff recently have entered into a supplemental letter of understanding ("Letter Agreement") with regard to conditions to be attached to the proposal contained in the Offer of Settlement. The conditions include rate methodologies for wheeling to, from and over the DC interconnections, reservation of capacity for firm power wheeling, and the opportunity for participation by other utilities in the ownership of incremental capacity increases in the DC interconnections.

4/ Application of Central Power and Light Company and Others for Exemption from State Commission Orders Preventing Voluntary Coordination Pursuant to Section 205 of the Public Utility Regulatory Policies Act of 1978, and Interconnection of Facilities, Provision of Transmission Services and Related Relief Pursuant to Sections 202, 210, 211 and 212 of the Federal Power Act ("Application").

5/ Houston Lighting and Power Co., (South Texas Project, Units 1 and 2), Docket Nos. 50-498A, 50-499A; Texas Utilities Generating Company (Comanche Peak Steam Electric Station, Units 1 and 2), Docket Nos. 50-445A, 50-446A. The NRC proceeding involved the issue of whether the intrastate-only operations of certain ERCOT utilities would create or maintain a situation inconsistent with the antitrust laws or the policies underlying those laws under section 105c of the Atomic Energy Act of 1954. Applicants for the nuclear licenses in that proceeding, including TUCS and HL&P, have reached a settlement agreement with the governmental parties therein which was tendered to the NRC Licensing Board on September 15, 1980.

6/ Amendment to Application of Central Power and Light Company and Others for Interconnection of Facilities, Provision of Transmission and Related Relief Pursuant to Sections 210, 211 and 212 of the Federal Power Act ("Amended Application").

II. Description of the Offer of Settlement

The proposal contained in the Offer of Settlement would require CSW to construct a direct current asynchronous interconnection of 200 mw capacity between PSO near Lawton, Oklahoma and WTU near Oklaunion, Texas ("North Interconnection"). CSW and HL&P would be required to construct a 500 mw direct current asynchronous interconnection between SWEPCO near Walker County, Texas and the South Texas Nuclear Project ("South Interconnection"). The Offer of Settlement includes terms and conditions for ownership participation by other entities and rates for wheeling power over the DC interconnections.

The Letter Agreement of September 11, 1980, supplements and, in some instances, supplants terms in the Offer of Settlement. It requires each owner of the DC lines to file a single wheeling tariff with the Commission, to, from, and over the DC interconnections which, inter alia, incorporates each relevant system's DC transmission costs in the overall transmission costs of that system; provides for a reservation of capacity in the lines for certain firm power wheeling for a minimum of five years after each DC facility goes into commercial operation; and provides for planning and participation by other entities in the ownership of incremental capacity in the DC lines. 7/

III. CONTESTED ISSUES

The Department contests the DC interconnection proposal as set forth in the Offer of Settlement as proposed to be modified by the Letter Agreement, on the grounds that, it is not clear that the proposal will meet the requirements of PURPA. It is undisputed by the Offer of Settlement that interconnections between ERCOT and SWPP are necessary and are in the public interest. The Department believes that AC interconnections between ERCOT and SWPP may have procompetitive features which DC interconnections would not possess. Moreover, the Department believes that DC interconnections exhibit anticompetitive characteristics not associated with AC interconnections, and that conditions cannot be imposed upon the DC interconnections that would render those interconnections the competitive equivalent of AC interconnections. Further, there are no apparent cost or system reliability reasons which would warrant the construction of the proposed DC interconnections rather than AC interconnections as the initial mode of interconnection between ERCOT and SWPP.

7/ In addition, the Letter Agreement obligates TUCS to file a single tariff for wheeling power to and from the DC interconnections.

A. The Legal Standard

To grant an application for an interconnection under PURPA, the Commission must find that the interconnection

(1) is in the public interest,

(2) would

(a) encourage overall conservation of energy or capital,

(b) optimize the efficiency of use of facilities and resources, or

(c) improve the reliability of any electric utility system or Federal power marketing agency to which the order applies, and

(3) meets the requirements of Section 824k of this title. 16 U.S.C. § 824i(c). 8/

In determining whether an interconnection application under PURPA meets the first criteria, that it be in the "public interest," the FERC must consider the impact of the interconnection on competition. The Supreme Court has held that in implementing the public interest standard under the Federal Power Act, FERC must give due consideration to competition. 9/ FERC's obligation to consider competition under the PURPA amendments to the Federal Power Act ("FPA") is no less compelling than it is under the unamended FPA. Accordingly, the FERC cannot determine that a contested interconnection is in the "public interest" within the meaning of PURPA if there is evidence in the record that an alternate mode of interconnection would not provide substantially similar benefits while posing fewer competitive risks.

In this proceeding, FERC must consider whether an AC grid would achieve substantially the same benefits as the proposed DC interconnections without creating the same anticompetitive effects. FERC can make this determination by comparing the proposed DC interconnection in the Offer of Settlement as proposed to be modified by the Letter Agreement, with the AC interconnection CSW initially proposed. Should the record demonstrate

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8/ Section 824k adds Section 212 to the Federal Power Act. Section 212 requires the Commission to make additional findings before ordering wheeling or interconnections.

9/ Gulf States Utilities v. FPC, 411 U.S. 747 (1973); FPC v. Conway Corp., 426 U.S. 271 (1976).

that, for example, the original CSW AC proposal exhibits fewer anticompetitive characteristics than the DC proposal and provides comparable overall conservation of energy or capital, efficiency in the use of facilities or resources, or improvement in the reliability of the electric systems to be interconnected then FERC cannot at the same time find that the instant DC interconnection proposal meets the "public interest" standard of PURPA. The Commission has already ruled in Order No. 32 that the proponents of an Offer of Settlement continue to bear the burden of proof that their proposal satisfies the statutory criteria.

B. Benefits of AC Interconnections

AC interconnections are the normal mode of interconnection in the electric power industry throughout the United States. DC interconnections have been utilized, to date, primarily for providing stability in special circumstances or for high voltage long distance transmission of large blocks of power from distant generation sources to an AC grid. 10/ Such is not the case with the DC interconnections contained in the proposed Offer of Settlement. 11/

Since the enactment of the FPA in 1935, the major electric utilities in Texas have refused to engage in interstate electrical transactions with the remainder of the nation. As a result, ERCOT is today electrically isolated from the SWPP and any other neighboring utilities. The effect of the isolation has been to preclude opportunities for competitive power transactions in the southwestern United States. Utilities and other generators and customers outside this isolated area are foreclosed from buying or selling power, and other entities inside ERCOT are foreclosed from buying or selling electricity outside ERCOT. The construction of AC interconnections between ERCOT and SWPP would create opportunities for such transactions to a significantly greater degree than would the construction of the proposed DC lines. AC lines could be constructed at a lower cost per unit of megawatt capacity than DC lines, and would furnish substantially greater capacity for interstate transactions than would DC lines. Thus, AC lines would enable utilities throughout the southwest United States to optimize the potential benefits of interstate interconnections.

10/ The longest such DC line was built after AC synchronous lines were already operating interstate on parallel paths.

11/ The proposed Northern Interconnection would consist of two back-to-back terminals, one on each side of the ERCOT-SWPP border at Oklaunion, Texas. The proposed Southern Interconnection would consist of a DC line approximately 153 miles long. See Testimony of Jack C. Wells, pp. 4-5, Offer of Settlement.

The construction of the proposed AC grid, although of lower capital cost than the DC proposal, would provide substantially more transfer capacity. An AC interconnected grid between ERCOT and SWPP, such as that proposed in the Application, provides not only such greater capacity, but also much more flexibility for future power flows and future economic interconnections than does the DC proposal contained in the Offer of Settlement. Once an AC grid is in place, additional small capacity AC lines can be easily constructed in the future to meet new needs at relatively low cost; smaller utilities in Texas could own and construct such smaller capacity AC lines as their individual needs dictate.

Thus, if an AC grid is constructed, the market for power flows between ERCOT and SWPP would develop in a manner unconstrained by artificial historical or technical barriers.

C. Detriments of the DC Proposal

In contrast to AC interconnections between SWPP and ERCOT, the DC proposal poses a number of significant risks to competition and efficiency in power transactions in the southwest United States. These risks fall into three categories: 1) permitting DC interconnections now may prejudice future interconnection decisions; 2) DC interconnections could result in greater capital and operating costs to owners and users than AC interconnections; 3) DC interconnections also exhibit other anticompetitive, bottleneck characteristics.

1. The approval of DC lines as the initial means of interconnections will likely irrevocably dictate the future character of interconnections in a manner that would not occur if AC lines were chosen as the first type of interconnections between ERCOT and SWPP. Thus, FERC is being called upon to render an opinion that will have an importance which transcends the instant proceeding. Construction of DC interconnections between ERCOT and SWPP will forestall, or possibly preclude for the foreseeable future, the type of AC grid with the procompetitive benefits mentioned above. The instant proceeding has its genesis in CSW's need to interconnect its four operating subsidiaries in order to comply with the Public Utilities Holding Company Act, 15 U.S.C. § 79 et seq. Once FERC permits CSW to interconnect its four operating subsidiaries, it is unlikely that other entities in the ERCOT or SWPP will be willing or able to invest as much capital as will CSW and HL&P in constructing interconnections between ERCOT and SWPP. Instead, the construction of future interconnections between ERCOT and SWPP will be largely predetermined by the interconnections which will have been decided in this proceeding.

If an AC grid were constructed at this time, future interconnections between ERCOT and SWPP could be either AC or DC in character. In particular, once an AC grid is in place, relatively low cost and low capacity AC lines can be constructed with only a minimal amount of coordination. The cost of constructing additional DC lines would be unaffected by whether the initial interconnections were AC or DC. If, however, CSW and HL&P are permitted now to construct DC lines, it will not be possible to construct the type of low cost AC lines that could have been constructed had an AC grid, rather than DC lines, been constructed at the outset. 12/ Moreover, once DC interconnections are in place, the cost of installing the type of AC grid that would have been constructed if the DC lines had not been built would be substantially greater than the cost of adding incremental capacity to existing DC interconnections.

2. Foreclosure of an AC interconnected grid and the resulting inability to construct additional AC smaller capacity ties will cause, both in the short and the long-term, a misallocation of resources and will impose artificial constraints on the electric utility industry in the southwest United States. Once the DC interconnections are in place, all power exchanged between ERCOT and SWPP will be required to pass over these lines, such that some of the power will have to be wheeled great distances even though the geographic distance between the point of origin and the ultimate point of destination of that power is relatively short. Such unnecessary and inefficient wheeling would be obviated by the construction of an AC grid, since such a grid would enable utilities to construct AC lines at a greater number of strategic delivery points than that contemplated by the DC proposal. These AC lines would not pose the locational problems created by a smaller number of DC lines.

It is clear from the testimony of CSW's Senior Vice President for Engineering, Mr. Jack C. Wells, that substantial economic advantages will result from constructing connections between SWPP and ERCOT. Mr. Wells states (at page 9) that over the period 1984-2000, CSW's total revenue requirements with the DC interconnections will be approximately $1.6 billion less than if the interconnections are not installed. Mr. Wells' testimony does not demonstrate, however, whether CSW's total revenue requirements would be even lower, if an AC grid were constructed. Moreover, the DC proposal contained in the Offer of Settlement minimizes the extent to which the benefits of CSW's interconnections will be shared with small electric utility systems, and does not compare the benefits which small systems would obtain from the

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12/ It is possible that DC interconnections may permit the construction of smaller capacity AC interconnections than would be possible absent any interconnections whatsoever, but only if the AC ties are operated in close coordination with the DC ties.

construction of an AC grid. The proposal, in this regard, does not encourage overall conservation of energy or capital or optimize the efficiency of use of facilities and resources as required by Section 210 of the FPA. Finally, the DC interconnection may place an undue burden on such small electric utilities, qualifying cogenerators and qualifying small power producers, and electric utilities affected by the proposed Offer of Settlement may be unreasonably impaired in rendering adequate service at a competitive cost to their customers in contravention of Section 212 of the Federal Power Act.

3. DC lines contain exceedingly restrictive characteristics in addition to those mentioned above which may render such lines "bottleneck" facilities that would impair, not facilitate, power flows between ERCOT and SWPP. For example, HL&P and CSW will have daily scheduling control over all transactions over the DC lines. If AC interconnections with their greater capacity and flexibility were constructed in lieu of DC, much less coordination of long-term planning and daily scheduling would be required.

In conclusion, for all the foregoing reasons, the Department formally contests the Offer of Settlement tendered by CSW, TUCS and HL&P and asserts that such Offer of Settlemnt does not contain substantial evidence for the Presiding Administrative Law Judge and the Commission to find that the Offer of Settlement is in the public interest and meets the other requirements of PURPA. PURPA requires a reasoned consideration by the Commission of the effects on competition of approving the proposed Offer of Settlement.

IV. PROPOSED PROCEDURES

The Department, in an effort to expedite hearings on a settlement in accordance with 18 C.F.R. § 1.18(b), recommends the following procedure to compile an adequate record on the contested issues:

1. That the Presiding Officer issue an order defining the issues and setting down a procedural schedule within 30 days;

2. That the order provide for a phased proceeding, Phase I to require the proponents to show that the Offer of Settlement, as compared to AC interconnections, fulfills the requirements of PURPA. If in the Phase I proceeding it is determined that the Offer of Settlement, as compared to AC interconnections, does not fulfill the requirements of PURPA, a Phase II proceeding shall be held to determine whether the AC proposal as contained in CSW's original Application complies with PURPA;

3. That such an order provide a limited period for necessary discovery;

4. That the parties be required to file simultaneous direct testimony within 45 days of the close of discovery; rebuttal testimony to be filed 30 days from the filing of direct testimony;

5. That evidentiary hearings for the purpose of cross-examining all persons filing direct and/or rebuttal testimony commence within 30 days of the filing of rebuttal testimony.

The Department believes that such procedures will allow the compilation of an adequate record, while still expediting the final decision in the case.

V. CONCLUSION

On the basis of the foregoing, the Department of Justice respectfully urges the Presiding Officer to issue an order:

1. Finding that there are contested issues of material fact, and that the record does not currently contain substantial evidence upon which the Commission may reach a reasoned decision on the merits of the contested issues;

2. Defining the issues to be resolved in the proceeding;

3. Setting down a procedural schedule to expeditiously conclude this proceeding on an adequate record.

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I hereby certify that on this 29th day of September, 1980, I caused to be served by United States mail, postage prepaid, copies of the foregoing Comments of Department of Justice Contesting the Offer of Settlement upon the counsel listed below:

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