

October 3, 1980



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

Houston Lighting & Power Company, et al.)	Docket Nos.
(South Texas Project, Units 1 and 2))	50-498A
)	50-499A
)	
Texas Utilities Generating Company, et al.))	Docket Nos.
(Comanche Peak Steam Electric Station,)	50-445A
Units 1 and 2))	50-446A

PUBLIC UTILITIES BOARD OF THE CITY OF
BROWNSVILLE, TEXAS MOTION FOR
REVISION OF PROCEDURAL SCHEDULE

The Public Utilities Board of Brownsville, Texas, ("Brownsville") hereby moves the Board to revise the outstanding Procedural Schedule ^{*} so as to extend the time for trial briefs, etc. from October 8, 1980 until ten (10) days after the Board rules on the proposed settlement and related matters, and to extend all other matters a commensurate time, and in support thereof Brownsville avers:

1. The Procedural Schedule has been promulgated and revised from time to time on the expectation that there would be a full-blown hearing involving most, or all, of the parties hereto,

<u>* /</u> October 8, 1980	Trial briefs, list of witnesses and exhibits, and summaries of testimony to be filed by complainant parties.
October 22, 1980	Trial briefs, lists of witnesses and exhibits, and summaries of testimony to be filed by defendant parties.
November 5, 1980	Final Prehearing Conference
November 12, 1980	Commencement of Evidentiary Hearing

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with evidence presented by complainant parties (including Central Power & Light Company, Department of Justice, Nuclear Regulatory Commission staff and defendant parties (including Houston Lighting & Power Company and Texas Utilities Generating Company). Brownsville (a small system deeply affected) anticipated introducing only such evidence as would appear necessary after the main protagonists' presentations having in mind the affirmative responsibilities of the NRC Staff and Department of Justice.

2. The situation is now radically changed because of the proposed overall Settlement (including proposed license conditions) said to be reached among the three Applicants and three Government agency staffs. In the status reports, filed September 15, 1980,^{*/} the Board is informed by the NRC Staff that (p. 1):

"The Staff is pleased to report that it, and the Department of Justice, have been able to conclude a settlement with the Applicants in these proceedings, as embodied in the two sets of proposed license conditions, attached herewith."

^{*/} NRC Staff's Fourth Status Report on Settlement, September 14, 1980, which are attached:

Comanche Stipulation (CSW and TUGCO) September 12, 1980;
Comanche Stipulation (NRC Staff, U. S. Department of Justice, Tex-La Electric Cooperative of Texas, Inc., and TUGCO) September 12, 1980;
STP Stipulation (NRC Staff, U. S. Department of Justice, CSW, Houston Lighting and Power Co., City of Austin, Texas and City Public Service Board of San Antonio, Texas) September 12, 1980;
License Conditions for Comanche Peak Steam Electric Station Nuclear Units Nos. 1 and 2; License Conditions for South Texas Project Units Nos. 1 and 2, September 12, 1980;
Letter of September 11, 1980 to John Cameron, Esq., FERC attorney, from HLP, Texas Utilities Company and operating companies thereof ("TU"), and CSW; "Confirmed" FERC Staff, "Accord" NRC Staff.

However, on September 25, 1980, Brownsville served its Motion for disapproval of proposed license conditions, together with comments and procedural suggestions. ^{*/} Moreover, the Texas Border Cooperatives, applicants for intervention, have stated their opposition to the proposed settlement ^{**/} criticizing the proposed conditions regarding DC interconnections, the capacity reservations in the interconnections, and the disconnection rights, although discussions with Central and South West Corporation "concerning enhanced opportunities for promulgation in generating units planned by that Company" (p. 8) are such that (by October 1, 1980) the Cooperatives will advise the Board "of whether they desire to withdraw their petition for leave to intervene" (p. 8). On October 1, 1980 Border filed a status report stating that no accord had been reached and therefore it could not accept the DC settlement.

3. Although Justice advised the Board that the proposed settlement license conditions would permit issuance of the operating licenses, the proposed conditions include a proviso:

"Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including FERC Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate".^{***/}

^{*/} Motion by the Public Utilities Board of the City of Brownsville, Texas for Disapproval of Proposed License Conditions; Comments Opposing Proposed License Conditions; and Request for Further Proceedings.

^{**/} September 24, 1980: Comments of the Texas Border Cooperatives on Proposed Settlements.

^{***/} Comanche condition (2)(c); STP condition (I.B. (11)).

Pursuant thereto, Justice has petitioned to intervene in the related proceeding at FERC; ^{*} and states therein (p. 3): ^{**}

"The construction of the two direct current asynchronous electrical interconnections between ERCOT and SWPP, as advocated by CP&L, PSO, SWEPCO, and WTU in their Amendment Application of June 27, 1980, instead of the construction of alternating current synchronous interconnections between ERCOT utilities and SWPP utilities, as advocated in the CP&L Application of February 9, 1979, could have effects on utilities both in ERCOT and SWPP and throughout the southwestern United States that would be anticompetitive, inconsistent with the public interest and contrary to the Public Utility Regulatory Policies Act of 1978 ("PURPA").

4. At FERC, Comments on the proposed settlement have been postponed because of the failure of the CSW companies to file an amended Offer of Settlement as contemplated by the schedule set by the Presiding Administrative Law Judge. One party, Northeast Electric Cooperative, Inc., has commented in opposition to the proposed DC interconnection because (p. 3): ^{***}

"There is no showing by CSW . . . that the proposed DC interconnections are more or less beneficial than the AC interconnections originally proposed."

and further that:

". . . . it is incumbent on CSW and this Commission to ensure that the proposed interconnections are indeed based upon sound engineering and economic principles."

^{*} Re Central Power & Light Co., et al, FERC Docket No. EL79-8

^{**} Petition of the United States Department of Justice for Leave to Intervene, dated September 17, 1980 (signed by six Justice attorneys).

^{***} Northeast Texas Electric Cooperative, Inc., Comments regarding the Offer of Settlement, September 11, 1980, FERC Docket No. EL79-8.

Northeast concludes:

" it is the recommendation of NTEC that the Joint Study Committee evaluations regarding the relative costs and benefits to the DC and AC interconnections as proposed be completed prior to approving the Offer of Settlement."

The other FERC parties, including Brownsville, are withholding Comments until the Amended Offer of Settlement has been filed.

5. The Settlement Agreement between CSW, HLP and TUGS of June 9, 1980 provides in effect (para. 4-7) that CSW's cessation of NRC litigation is interdependent upon a satisfactory FERC order within one year (i.e., by June 8, 1981) and entry of a final and unappealable SEC order (no deadline specified and therefore it could be many years off). Moreover, during the interim period of the FERC proceeding CSW may terminate the Settlement Agreement at stated intervals of 60, 120 and 180 days from Agreement date. Admittedly, there is some lack of clarity in these provisions, which is further compounded by its finale:

" and this Agreement shall terminate whenever CSW, TUGS and HLP agree that it has become apparent that either condition A, B or C will not be satisfied." (Para. 7).

6. The situation is confused and until clarified it is difficult if not impossible to know how to prepare for trial.

(a) Are the three companies fully and finally committed to a settlement (including the proposed NRC license conditions), or can CPL still terminate the 3-party settlement agreement on December 8, 1980 (180 days after the June 9, 1980

contract date) or on June 18, 1981 (if FERC has not granted the PURPA application, or has denied it, or at any other time if SEC determines that the DC interconnection will not meet the integration standards of the Public Utility Holding Company Act)?

(b) Is Justice fully committed to the settlement (including the proposed conditions)? Justice is contending (properly so) in FERC Docket No. EL 79-8, that the DC interconnection is unsatisfactory and anticompetitive, but that is also a concurrent issue in the NRC proceeding. Therefore, necessarily, Justice's position is substantively contrary to an NRC finding that the conditions cure the situation inconsistent with the antitrust laws; while, on the contrary, if the Applicants are proposing an anticompetitive interconnection, how can NRC make the contrary finding? Perhaps the Board needs to withhold some or all actions until the DC v. AC matter is resolved at FERC.

(c) Are HLP and TU fully committed, or can they withdraw from the settlement (including the proposed license conditions) if FERC orders an AC rather than DC connection?

(d) Is the Board going to rule on Brownsville's Motion of September 25th to reject, on legal grounds, the Settlement (including proposed conditions)? If so, the parties would need to know prior to filing their trial briefs since the hearing would be vastly different in one case as compared to another.

(e) Aside from (d) above, is the Board going to review the settlement (including proposed conditions) and indicate whether it can approve them without a hearing under this case's posture, and, if not, does it desire a hearing in which proponents will put on evidence to support the settlement, and opponents will oppose? Will the Board, after review of the proposed Settlement, fashion some other form of hearing as may be most useful in resolving the case.

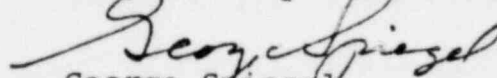
(f) Is there to be a bifurcated hearing: first, as to whether the proposed settlement can stand, and, if the Board decides it cannot, then, second, a full-blown hearing on the merits.

7. In view of the foregoing, it appears necessary that a pre-hearing conference be held to consider these matters, that the parties be given opportunity to file such pleadings as they deem appropriate (including answers to Brownsville's Motion of September 25, 1980), and that the hearing schedule be deferred until these matters are cleared. While this may involve a short delay, it will over-all shorten the time for completing this proceeding. Obviously, great progress has been made toward case resolution by the proposed settlement (since the hearing schedule was first established) and this justifies the extension of the hearing schedule so as to clarify the form and nature of the future proceedings.

8. It is important also to consider the matter of pre-hearing and hearing costs which could be onerous and crushing on a single small system like Brownsville. We obviously must find a way to minimize these costs or otherwise be deprived of an opportunity to be heard by the sheer size of the price tag. We believe it one of the purposes of the administrative agency, to make it economically feasible for a small system's rights to be protected without all the tremendous expense that has now become characteristic of the federal district courts. Accordingly, we urge the Board to cooperate, in this case by clarifying the status of the proceeding, so that Brownsville can be heard on an economic basis.

WHEREFORE, Brownsville moves (i) to have the date for trial briefs and related matters postponed until 10 days after the Board rules on the proposed Settlement and related matters and to extend all other scheduled matters a commensurate time; (ii) to have the Board call a conference of the parties; and (iii) for such other relief as the Board may deem appropriate.

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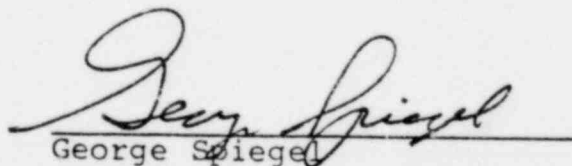
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