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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER COMPANY	)	NRC Docket Nos. 50-498A
PUBLIC SERVICE BOARD OF SAN ANTONIO	)	50-499A
CITY OF AUSTIN	)	
CENTRAL POWER AND LIGHT COMPANY	)	
(South Texas Project, Unit Nos. 1 and 2)	)	
	)	
TEXAS UTILITIES GENERATING COMPANY, et al.	)	NRC Docket Nos. 50-445A
	)	50-446A
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

NRC STAFF COMMENTS ON AND MOTION FOR APPROVAL OF SETTLEMENT LICENSE CONDITIONS

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NRC STAFF COMMENTS ON AND MOTION FOR APPROVAL OF SETTLEMENT LICENSE CONDITIONS

I. INTRODUCTION

The NRC Staff hereby submits its comments on the proposed settlement license conditions (hereinafter referred to as "settlement conditions" or "settlement license conditions"), as directed by the Board in its prehearing conference order of October 24, 1980.[1/] In submitting these comments, the Staff also moves the Board to approve these settlement license conditions, and to make them effective immediately.

1/ See Transcript of Prehearing Conference, at 1258, 1263-64 (Oct. 24, 1980) in the above-captioned proceedings. An extension of time until December 3, 1980 to file this pleading was granted by Chairman Miller on November 20, 1980.

The proposed settlement conditions were submitted to the Board on September 15, 1980,[2] following a lengthy and complex settlement effort among the parties which began in April, 1980.[3] At this point, the only party in the consolidated proceedings not totally committed to support the settlement conditions is the Public Utilities Board of the City of Brownsville (hereinafter "Brownsville"). Even Brownsville, however, has admitted that certain portions of the settlement are acceptable to it.[4]

The Staff has reviewed Brownsville's objections to the proposed settlement conditions as set forth in its Motion for Disapproval of September 25, 1980 (hereinafter "Motion"), its Initial Trial Brief of October 8, 1980 ("Initial Brief"), and its recent Comments of November 12, 1980 ("Comments"). The Staff

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2/ The Comanche Peak and South Texas settlement conditions and associated stipulations were attached to the NRC Staff's Fourth Status Report on Settlement, dated September 14, 1980. The settlement conditions and updated stipulations are also annexed hereto, as Attachment No. 1. The Staff expects to file an Errata Sheet soon to correct typographical errors.

3/ Shortly before the scheduled commencement of the hearing, three private parties reached a settlement agreement in principle among themselves. See the final Settlement Agreement of CSW, TU, and HLP, dated June 9, 1980. In light of that development, the Licensing Board permitted all parties an extension of time in which to explore settlement of the entire matter. See Order of April 10, 1980. Following a series of monthly status reports and further extensions, the present settlement license conditions were negotiated and, finally, submitted to the Board for its approval on September 15, 1980. See NRC Staff's Fourth Status Report on Settlement (Sept. 14, 1980). During this time, the Tex-La Electric Cooperatives of Texas, Inc., intervenors in Comanche Peak, also reached their own settlement agreement with TU, and advised the Board they did not intend to participate actively in the proceedings. See Tex-La Status Report of May 9, 1980.

4/ Transcript of Prehearing Conference, at 1177 (Oct. 24, 1980); see also, Brownsville's Motion for Disapproval, at 14, 18 (Sept. 25, 1980).

believes that Brownsville has not asserted any contention which would justify a delay in approval of the settlement conditions by this Board. As the following analysis of the settlement conditions demonstrates, approval of the settlement conditions and their immediate effectiveness is fair and reasonable within the public interest[5/] and will not prejudice Brownsville in any manner.

II. BACKGROUND

The Staff has reviewed prior NRC antitrust proceedings in which Licensing Boards had before them the issue of approval of settlement license conditions.

5/ As discussed in Section II, infra, the standard for this Board to approve the settlement conditions is whether they are fair and reasonable within the public interest and whether prejudice to non-settling parties would occur. There is no statutory or regulatory basis that would require this Board to make a finding with respect to whether issuance of the license with the settlement conditions would create or maintain a situation inconsistent with the antitrust laws or their policies. That type of finding is necessary only after a full-evidentiary hearing, held pursuant to § 105c(5) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2135c(5). Such a statutory hearing may eventually be held here at Brownsville's behest, and this Board might make modifications to the settlement conditions as a result of the full hearing. However, this full statutory hearing need not occur before approval of the conditions is granted. In addition, the NRC Staff considers the creation or maintenance of a situation inconsistent with the antitrust laws when assessing proposed settlement license conditions and when advising the Board that approval of the settlement conditions is in the public interest.

In some of these cases the settlement was contested,[6] while in others all parties agreed to the settlement.[7] Before granting approval in the contested cases, the Boards have examined: (1) whether the license conditions were in the public interest, and (2) whether immediate approval and implementation of the conditions would prejudice any party. Where the Boards found these criteria were satisfied, approval was granted without impairing the right of non-settling parties to seek a full evidentiary hearing on the merits.[8] In cases where all parties settled, this inquiry was not made.

One example of a contested settlement situation is the Oconee-McGuire anti-trust proceeding. There, the Applicants, Justice Department, and NRC Staff reached a settlement which was not initially acceptable to intervenors. The Licensing Board, upon motions by the applicants and the Staff,[9] ordered

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6/ See unreported Order of May 24, 1974 in Duke Power Co. (Oconee Units 1, 2 & 3, McGuire Units 1 & 2), Docket Nos. 50-269A, 50-270A, 50-287A, 50-369A, 50-370A, annexed hereto as Attachment No. 2.; Order of June 24, 1974 in Duke Power Co. (Catawba Nuclear Station, Units 1 & 2), LBP-74-47, 7 AEC 1158 (1974); Louisiana Power & Light Co. (Waterford Steam Generating Station, Unit No. 3), Docket No. 50-382A, Hearing Transcript, at 774-777 (Aug. 19, 1974), annexed hereto as Attachment No. 3.

7/ See Order of June 28, 1974 in Georgia Power Co. (Vogtle Nuclear Plant, Units 1, 2, 3 and 4), Docket Nos. 50-424A, 50425A, 50-426A, 50-427A, CLI-74-25, 7 AEC 955 (1974); unreported Order of July 11, 1974 in Georgia Power Co. (Edwin I. Hatch Nuclear Plant, Unit No. 2), Docket No. 50-366A; Initial Decision of July 27, 1976 in Kansas Gas and Electric Co. (Wolf Creek Generating Station, Unit No. 1), Docket No. 50-482A, LBP-76-29, 4 NRC 62 (1976).

8/ Order of June 24, 1974 in Duke Power Co., supra note 6, 7 AEC at 1160.

9/ Annexed hereto as Attachment No. 4.

approval of the license conditions.[10] The Board focussed on whether the conditions were in the public interest:

> After careful review of the Joint Motion and the attachments thereto, all the related pleadings and record to date in this proceeding, the Board finds that the proposed conditions contained in the attached Applicant's "Statement of Commitments" were made to resolve the differences as between the Department of Justice, the AEC Regulatory Staff, and the Applicant and are a reasonable settlement of said differences within the public interest. Accordingly, the Board grants said Joint Motion and hereby directs that the commitments attached to this Order be made conditions to all permits and licenses issued or to be issued by the Atomic Energy Commission with respect to the Oconee and McGuire nuclear reactors.[11]

That Licensing Board, one month later, had occasion to address the same issue in Catawba, a contemporaneous proceeding in which Duke Power Company was again the applicant. The Board, in its Order of June 24, 1974, again reiterated the public interest standard and then examined the element of possible prejudice to intervenors stemming from immediate implementation of the settlement conditions:

> The Cooperative Intervenors further state their objection to the "purported withdrawal of the advice letters by the Attorney General and to the settlement among the Applicant, Department of Justice and Staff absent settlement with the Municipal Intervenors and the Cooperative Intervenors." They state that they will be prejudiced if said motion is granted though they do not explain how.
>
> The Board does not agree. The Atomic Energy Commission's Rules of Practice (as distinguished from the Federal Rules of Civil Procedure) specifically encourage settlements. A reasonable settlement within the public interest among three of the five parties to a complex proceeding, such as this one, is consistent with the overall objective of concluding proceedings in an expeditious and orderly manner. Applicant's motion goes only to the three-party settlement previous noted and Cooperative Intervenors have not

10/ Attachment No. 2 (unreported Order of May 24, 1974).

11/ Id. at 3-4 (emphasis added).

> shown that it affects the other two parties. The Board fails to see where Intervenors have been improperly prejudiced or disadvantaged. The Board also has not been shown why Applicant's motion should be held in abeyance pending consummation of the settlement among Intervenors and Applicant.
>
> Accordingly, the Board directs that the commitments attached to this order be made conditions to all permits and licenses issued or to be issued by the Atomic Energy Commission with respect to the Catawba Nuclear Station, Units 1 and 2.[12/]

This approach is consistent with that taken in Waterford. another contested settlement situation.[13/] The Licensing Board, prior to the commencement of the show cause hearing in Waterford to receive evidence in opposition to the settlement, accepted the settlement conditions as presented by the Department of Justice and the NRC Staff.[14/] As a prerequisite to the commencement of that show cause hearing, the Applicant agreed to an "assumption arguendo" to define ation inconsistent against which the settlement conditions were to be measured.[15/] This assumed situation then was used by the Licensing Board as a basis for judging the adequacy of the settlement conditions during the show cause hearing in which intervenor's evidentiary challenges

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12/ 7 AEC 1158, 1159 (emphasis added). The Catawba proceeding was in a different procedural time frame than the Oconee-McGuire antitrust proceeding. As is clear from the June 24th Order, the Board adopted the same standards as in the Oconee-McGuire decision, without affecting the intervenors' rights to a full hearing. See 7 AEC at 1160.

13/ Louisiana Power and Light Co. (Waterford Steam Generating Station, Unit No. 3), LBP-74-78, 8 AEC 718 (1974).

14/ Attachment No. 3; see also, 8 AEC at 72-21.

15/ 8 AEC at 719, 721-22.

were heard.[16/] This procedure also enabled the governmental parties to withdraw as full participants from the proceeding.

In sum, prior proceedings at the NRC demonstrate that Licensing Boards have approved fair and reasonable settlements within the public interest prior to the commencement of evidentiary antitrust proceedings, after considering possible prejudice to non-settling parties. This is consistent with the explicit mandate of the Commission in 10 C.F.R. § 2.759, which states:

> The Commission recognizes that the public interest may be served through settlement of particular issues in a proceeding or the entire proceeding. Therefore, to the extent that it is not inconsistent with hearing requirements in section 189 of the Act (42 U.S.C. 2239), the fair and reasonable settlement of contested initial licensing proceedings is encouraged. It is expected that the presiding officer and all of the parties to those proceedings will take appropriate steps to carry out this purpose.

As will be discussed in Section IV, infra, the Staff believes that following approval of the settlement conditions, Brownsville, upon an appropriate showing of genuine issues to be heard, has the right to present its evidence on the issue of whether issuance of licenses with the settlement conditions will create or maintain a situation inconsistent with the antitrust laws or policies thereunder, pursuant to Sections 105c and 189 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2135c, 2239.

16/ The Applicant's "assumption arguendo" served as a substitute for the "finding" of a situation inconsistent required by § 105c(5) and thereby allowed the settlement conditions to be evaluated by the Board under the standards of § 105c(6). This is obviously a different evaluation, unique to Waterford, than the public interest evaluation which is normally made in deciding whether to adopt proposed settlement conditions, consistent with 10 C.F.R. § 2.759.

III. ANALYSIS OF SETTLEMENT CONDITIONS

In this section, the Staff analyzes the settlement license conditions and their expected pro-competitive impact on the respective Applicants in South Texas and Comanche Peak and on other electric utilities in and around the TIS-ERCOT area.[17/] This analysis is focussed on the major areas addressed by the settlement conditions: A) Scope of the Conditions; B) Disconnections and Interconnections; C) Access to Nuclear Power; D) Transmission Services; E) Joint Planning; F) Coordination Services; and G) Bulk Power Sales.

The settlement conditions, as will be seen, promote competition in and around the TIS-ERCOT area and encourage coordination and transactions among utilities in that area. The following discussion indicates how the settlement conditions satisfactorily address the Staff's concerns which arise from allegations of monopolization or market domination by certain Applicants and from other allegations of agreements, group boycotts, and concerted refusals to deal which unreasonably restrain trade. The analysis demonstrates that approval and inclusion of the settlement conditions in the Comanche Peak and South Texas project licenses is a fair and reasonable settlement within the public interest and would obviate the necessity for a full antitrust hearing.

17/ In the analysis which follows, the settlement conditions are, in places, identical or substantially similar for both the South Texas and Comanche Peak licenses. Those conditions are addressed together. Where, however, certain license conditions affect the Applicants in the South Texas Project differently than those in Comanche Peak, those differences are pointed out. Such differences arise mainly because certain allegations or competitive concerns were unique to those particular Applicants.

A review of Brownsville's pleadings reveals that its principal objections to the settlement conditions are:

1) that the conditions would improperly legitimate unilateral refusals to deal, and that the proposed "disconnection clauses" do not adequately remedy the alleged group boycott-refusal to deal situation;[18/]

2) that the procedures set forth in the proposed conditions would result in impermissible burdens and unwarranted delays in obtaining interstate interconnections;[19/]

3) that disconnections permissible under the settlement conditions could cause adverse electrical effects;[20/]

4) that ambiguities or obscurities in the conditions,[21/] particularly in the transmission area,[22/] render them either unacceptable or incapable of being properly assessed;

18/ Brownsville's Motion, at 6, 9, 16-17; Initial Brief, at 10, 13, 30-36; Comments, at 8, 10, 12, 15, 32-42, 55-61.

19/ Motion, at 9-10; Initial Brief, at 30-35; Comments, at 12-15.

20/ Motion, at 5; Comments, at 8, 15.

21/ Motion, at 4, 14, 18-19; Comments, at 4, 11-13, 14, 25.

22/ Motion, at 14-16; Comments, at 4-5, 14, 19-20.

5) that certain transmission conditions are nullified by other conditions and by the FERC agreement letter;[23] and

6) that potential jurisdictional conflicts between the Federal Energy Regulatory Commission ("FERC") and the Texas Public Utility Commission ("TPUC")[24] have not been resolved by the conditions and add to uncertainties in the transmission area.

These points are addressed in the appropriate sections of the analysis which follows. Generally, however, several major flaws are inherent in Brownsville's assertions. First, Brownsville dwells on how possible ambiguities will lead to future uncertainty, but nowhere provides any ascertainable facts which show how Brownsville itself would be adversely affected at any time. Similarly, Brownsville's complaints about ambiguities and uncertainties in the settlement conditions do not address, in specific terms, any resulting anticompetitive harm to other utilities or how the public interest will be harmed.

Second, Brownsville continues to insist that this Board's authority and duty extends to such tenuous areas as: a) resolving possible, future jurisdictional disputes between the FERC and the TPUC; b) determining the exact rates, terms, and conditions of Brownsville's participation agreement in the South

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23/ Motion, at 5, 17-18; Comments, at 19-21. The "FERC agreement letter" is a letter dated September 11, 1980, from counsel for TU, HLP, and CSW to counsel for the FERC Staff, which is incorporated by reference in the settlement conditions.

24/ Motion, at 22; Comments, at 20, 23-24.

Texas Project and its transmission contracts with CPL, and c) requiring the Applicants to maintain membership in and participate in TIS so as not to disadvantage Brownsville.[25/]

Finally, Brownsville insists that the disconnection sections of the settlement conditions vitiate provisions of the Federal Power Act, the Sherman Act, and the Federal Trade Commission Act. In so claiming, Brownsville ignores the plain language of the final license condition which mandates that the conditions must be implemented "in a manner consistent with applicable Federal, state, and local statutes and regulations."[26/]

A. Scope of the Conditions[27/]

In the South Texas settlement conditions, the "Applicants" affected include HLP, CPL, San Antonio and Austin. However, most sections are directed only at HLP and/or CPL, against whom the major allegations of anticompetitive conduct have been made. San Antonio and Austin have consented to imposition of certain conditions which the Staff considers will enhance the overall pro-competitive nature of the settlement, thereby also further assuring the Staff that its monopolization and group boycott-refusal to deal concerns are met. "Entities" covered by the South Texas conditions are electric utilities (or associations thereof) located in or surrounded by the areas in which the

25/ Motion, at 15; Comments, at 26.

26/ Comanche Peak (hereinafter "CP") condition 3.D.(2)(p); South Texas Project (hereinafter "STP") condition I.B(11).

27/ See generally, CP conditions 3.D.(1)(a)-(g); STP conditions I.A(1)-(6).

Applicants serve electric customers at wholesale and retail. The main requirement is that such an electric utility must propose to or actually own, operate, or contractually control facilities for the generation, transmission, or distribution of electric power.

The "Applicants" covered by the Comanche Peak conditions, both jointly and severally, are Texas Utilities Generating Company, the Texas Utilities Company, and the three operating company subsidiaries - TESCO, TPL, and DPL. The "Entities" included in these conditions are those electric utilities (or associations thereof) which propose to or actually own, operate or contractually control facilities for the generation of electric power, although certain conditions are appropriately broadened to include those Entities which have or propose to have generation, transmission, or distribution facilities. Furthermore, some conditions extend to all Entities while some are limited to cover only those Entities located in the "North Texas Area", which is defined by a listing of Texas counties in which the Applicants have facilities for wholesale or retail electric service.

For purposes of the following analysis, the Applicants covered by the Comanche Peak license conditions will be referred to as "TU." The Applicants covered by the South Texas license conditions will usually be identified individually (i.e., HLP, CPL, San Antonio, or Austin), unless the particular condition is applicable to all four in which event "Applicants" is used.

B. Disconnections and Interconnections: the Intrastate/Interstate Question

1. Provisions of the Settlement Conditions

The settlement conditions address the two main areas of concern on the intrastate/interstate question: (1) prohibitions against agreements or conspiracies establishing group boycotts or refusals to deal, and (2) the manner in which utilities inside and outside of ERCOT may effectuate interstate interconnections. As to the first point, TU and HLP are prohibited from entering into or maintaining any agreement or understanding with any other Entity to refuse to deal with another Entity for the purpose of avoiding jurisdiction under the Federal Power Act.[28/] If TU or HLP refuses to interconnect with, or chooses to disconnect from, any Entity, such action must be unilateral.[29/] As to the second point, TU and HLP are prohibited from unilaterally disconnecting from or refusing to interconnect with any Entity because of the interstate character of the facilities of that or another Entity, provided that the Entity has filed and pursued an application for an order by the FERC directing an interconnection under Sections 210, 211 and 212 of the Federal Power Act.[30/] TU and HLP are also prohibited from unreasonably opposing any such interconnection application, and are required to

28/ CP condition 3.D(2)(1)(b); STP condition I.B(6)(b).

29/ Id.

30/ CP condition 3.D(2)(1)(a); STP condition I.B(6)(a). Sections 210, 211, and 212 were added to the Federal Power Act by the Public Utility Regulatory Policies Act of 1978 (hereinafter cited as "PURPA"), 16 U.S.C.A. §§ 824i, j, k. The principal feature of importance here is that the FERC can now order interstate interconnections under PURPA without affecting the overall non-jurisdictional status of TU, HLP, or other utilities in Texas. Obviously, any such interconnection order under PURPA does subject utilities to limited FERC jurisdiction, i.e., at least as to the terms and conditions contained in that PURPA order.

pay the reasonable expenses of any Entity resulting from the filing of such an application with FERC solely because of TU's and HLP's desire to remain outside FERC plenary jurisdiction.[31/]

The conditions further provide the NRC with tools for enforcement of the prohibitions against disconnection and refusals to interconnect. In the event an interconnection application is denied by the FERC, any continuing refusal by TU or HLP to make that interconnection (or to maintain that interconnection) shall be subject to an enforcement proceeding at the NRC to determine whether there is a violation of the license conditions, in light of whether such refusal creates or maintains a situation inconsistent with the antitrust laws or the policies thereunder. Prior factual determinations by FERC as to costs or system reliability will not be redetermined by the NRC. In such NRC proceeding, the burden of proof will be on TU or HLP.

Notwithstanding the application and proceedings at the FERC and possible subsequent proceedings at the NRC, neither the Department of Justice nor any other Entities are precluded from filing antitrust actions in federal courts in the event TU or HLP refuses to interconnect with, or disconnects from,

31/ CP condition 3.D(2)(1)(c); STP condition I.B(6)(c). TU and HLP are not, however, required to pay such expenses if: (1) the application before FERC is denied for reasons advocated by TU or HLP, or (2) the expenses would have been incurred irrespective of whether the Entity filed such application. The CP condition would not apply to the expenses of CSW (or any of its subsidiaries) and HLP in FERC Docket No. EL79-8. CP condition 3.D(2)(1)(c), footnote 1. Similarly, the STP condition would not apply to the expenses of CSW and TU (or any of their subsidiaries) in that proceeding. STP condition I.B(6)(c), footnote 1.

any Entity.[32] Neither TU nor HLP is precluded from raising any legal or equitable defense it may have. In addition, TU and HLP are bound to use their best efforts to amend their agreements with Entities to remove any inconsistencies with the prohibitions against disconnections, or refusals to interconnect, contained in the settlement license conditions.[33]

These conditions provide a viable means by which interconnections can now develop between ERCOT and the Southwest Power Pool ("SWPP"), while remedying unlawful conspiracies, agreements, group boycotts, and refusals to deal. Recognizing the present status of the Applicants as non-jurisdictional with respect to FERC, the settlement conditions use the PURPA framework as a means to establish interstate interconnections and associated wheeling without extending plenary FERC jurisdiction. To reduce the burden on an Entity seeking such an interconnection, the settlement conditions prevent unreasonable opposition by TU or HLP and generally require TU and HLP to pay the reasonable expenses of such Entity. As a result, the scope of TU's and HLP's unilateral rights has been better defined, and the NRC's acceptance of FERC's resolution of certain factual issues dealing with cost and reliability will highlight competitive issues in the NRC enforcement review and avoid needless relitigation.

32/ CP condition 3.D(2)(l)(d); STP condition I.B(6)(d).

33/ CP condition 3.D(2)(m); STP condition I.B(7).

These aspects of the settlement conditions, when combined with the obligation of TU, HLP, and CPL to use their best efforts to secure approval of the presently proposed DC interconnections,[34/] provide a workable means for all utilities to participate in the presently-planned and future interstate interconnections. The proposed DC interconnections, with the support of TU, HLP, and CSW, are expected to be operational some 4-5 years after FERC approval. This will lead to the earliest possible interstate transactions and to the expansion of utility planning horizons to encompass interstate opportunities heretofore precluded.

The planning process for utilities in ERCOT (and perhaps in surrounding areas) looking to interstate power opportunities is also enhanced by the actual establishment of procedures to obtain such interstate opportunities and a definite proscription of disconnections or refusals to interconnect by TU or HLP when those procedures are followed. This new certainty in utility relationships in the ERCOT area provides protection against repetition of the disruption in electric utility relationships which occurred in 1976, while preserving Entities' rights to seek interstate power. Entities such as South Texas Electric Cooperative and Medina Electric Cooperative ("STEC/MEC"), whose delivery of power generated at remotely-sited plants

34/ Central and South West Corporation has made the application at the FERC in Docket No. EL79-8 for itself and its subsidiaries, one of which is CPL. By virtue of CP condition 3.D(2)(o) and STP condition I.B(10), TU, HLP, and CPL would be obligated to use their best efforts to obtain approval of this application. The additional terms and conditions to which HLP, TU, and CPL have agreed are set forth in the September 11, 1980 letter to FERC counsel.

could be imperiled in the event of a disconnection,[35/] have now gained greater assurance that their generation resources can continue to supply power to their customers.

In connection with the DC interconnection application in FERC Docket EL79-8, TU, HLP, and CPL have agreed to seek approval by FERC of certain terms and conditions which, among other things, relate to: (1) offers and terms of participation in the proposed DC interconnections (and future additions thereto); (2) transmission services for interstate energy; and (3) reservation of firm wheeling capacity for smaller utilities. These commitments regarding the FERC DC application are not before this Board for approval or any action. The FERC will decide any dispute which arises over these commitments. Thus, Brownsville's assertions as to the specific rate levels and rate designs suggested in the September 11, 1980 letter can be raised at the FERC, the appropriate forum.

It is nonetheless worthwhile mentioning the general objectives of the September 11, 1980 letter, which seek to enable all utilities in the ERCOT-TIS area (and beyond) to have fair and equitable access to the DC facilities and to permit a unified planning effort for potential interstate power exchanges. The treatment of transmission costs and resulting rates has the effect of

35/ STEC/MEC is the co-owner of the 400 MW San Miguel lignite generating unit with Brazos Electric Power Cooperative. If there is a renewal of the split in TIS such as occurred in 1976, STEC/MEC risks loss of its share of the unit. Deposition of W. S. Robson, General Manager of STEC, September 5, 1979, Tr. at 14.

spreading the costs for wheeling over a larger base, with the ultimate effect that rates for interstate wheeling would normally be less expensive than if separate wheeling rates were established for the DC and AC facilities respectively. TU and HLP are each to propose single interstate wheeling rates. This is anticipated to minimize the costs of wheeling of interstate power by reducing the number of wheeling charges to be paid for interstate transactions and to simplify the ascertainment of wheeling costs. Requesting Entities will also be able to receive prompt information on transmission line flows to permit them to investigate opportunities for power transactions in the interstate market.

Reservation of a portion of the capacity in the DC lines by HLP and CPL for firm wheeling by smaller entities will allow further flexibility in using the DC interconnections. All Entities in ERCOT and SWPP are also to be afforded the opportunity to participate in the planning of increases in interconnection capacity. If the FERC accepts these commitments, the resulting access to interstate markets would provide a means to increase competitive opportunities, e.g., some Entities might choose to lessen their dependence on their present power suppliers while other generating Entities might choose to seek new purchasers for any excess power they generate.

2. Brownsville's Criticisms

Having outlined and discussed the provisions of the settlement conditions related to interstate interconnections, we now turn to an evaluation of Brownsville's criticisms of those conditions. Brownsville's arguments deal

primarily with those conditions governing disconnections and refusals to deal vis-a-vis the desires of TU and HLP to maintain their non-jurisdictional status under the Federal Power Act.[36/] Brownsville argues that the license conditions will be ineffective in curing, and in fact will continue, the situation inconsistent with the antitrust laws resulting from the alleged "intrastate only" policy. In support of this argument, Brownsville raises three principal points: (1) that the Applicants will be able to perpetuate the anticompetitive effects of their "intrastate only" policy by virtue of the unilateral actions which are permitted under the settlement conditions,[37/] (2) that the settlement conditions postpone a remedy to which Brownsville is now entitled in these Section 105c proceedings,[38/] and (3) that PURPA imposes such heavy burdens as to discourage any Entity from seeking an interconnection and wheeling order under its provisions.[39/]

36/ Brownsville's Initial Brief, at 10, 13, 29-38; Comments, at 5-6, 8, 10-17, 32-42, 55-61.

37/ Comments, at 61-66. It is unclear whether Brownsville continues to argue, as it did in its Initial Brief, at 31, 34, and 36, that the history of the ERCOT-TIS systems precludes unilateral "intrastate-only" policies.

38/ Comments, at 12.

39/ Comments, at 12-13. Brownsville's other points generally reflect a failure to have fully considered all of the settlement license conditions, the stipulations among the parties, and the role of the FERC. Thus, Brownsville's fear that HLP may argue that it has eliminated the "situation inconsistent" solely by the prohibition against agreements with other Entities to refuse to deal ignores HLP's agreement to support the entire set of proposed license conditions. Brownsville's Initial Brief, at 31. Similarly, Brownsville's argument that STP condition I.B(6)(b) does not reach HLP's ongoing agreements fails

(Continued)

As to the first principal point, Brownsville maintains that the requirements for solely unilateral action will unlawfully allow TU and HLP to continue an agreement to disconnect in the event third parties affect their nonjurisdictional status because the history of the Texas systems has given rise to implicit understandings between HLP, TU and other systems. Even if the policies pursued are unilateral, Brownsville adds, an anticompetitive situation will remain.40/

To the contrary, the settlement conditions render such arguments inapposite. First, continuation of the alleged intrastate-only agreement is specifically prohibited under STP condition I.B.(6)(b) and CP condition 3.D.(2)(1)(b), virtually identical to the STP condition.

The STP condition reads:

> HLP shall not enter into or maintain any agreement or understanding with another Entity or Applicant to refuse to deal with any other Entity(ies) or Applicant(s) with the purpose of maintaining an exemption from jurisdiction under the Federal Power Act, and in

39/ (Continued)

> to take account of the proscription against "maintain[ing] any agreement or understanding," and also ignores STP condition I.B(7) which obligates HLP "to use its best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs 6(a) and 6(b) hereof". Id. at 36-37. Finally, Brownsville's comparison of AC and DC lines raises matters which are for determination by FERC, rather than the NRC.

40/ Brownsville's Initial Brief, at 36-37.

> the event that HLP refuses to make an interconnection with or chooses to disconnect from any Entity(ies), such decision and/or action by HLP will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after HLP decides to undertake such action, it may notify any affected Entity of its decisi( ).

Second, HLP and TU must use their best efforts to amend all contracts to conform to the conditions.[41/] Brownsville apparently overlooks this in making its most recent arguments.[42/]

In addition, not all refusals to deal are unreasonable restraints of trade,[43/] notwithstanding Brownsville's arguments to the contrary. Under the governing settlement conditions, neither TU nor HLP can obligate the other by agreement or understanding to disconnect in the event a third party engages in activities causing interstate flows on either of their systems. Similarly, they cannot require other electric utilities with which they are interconnected to disconnect from third parties in the event interstate power flows are caused on their systems. Instead, HLP and TU will be allowed only to announce unilaterally and in advance their intentions regarding actions which may affect their nonjurisdictional status, in accordance with prevailing antitrust

41/ STP condition I.B.(7); CP condition 3.D.(2)(m).

42/ Comments, at 10.

43/ See, e.g., Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977) (unilateral refusal to deal); Joseph E. Seagram & Sons, Inc. v. Hawaiian Oke & Liquors, Ltd., 416 F.2d 71 (9th Cir. 1969) (concerted refusal to deal), cert. den. 396 U.S. 1062 (1970).

jurisprudence. See Albrecht v. Herald Co., 390 U.S. 145, 149 (1968); United States v. Parke, Davis & Co., 362 U.S 29 (1960).[44/]

Brownsville may not like the result--that HLP and TU may retain their non-jurisdictional status--but the means of achieving that end is now governed by the settlement conditions. Neither TU nor HLP will have the right under the settlement license conditions to agree, act in concert, or otherwise bind the other to refuse to deal with others in the event there are such interstate power flows. Continuation of the alleged agreement to refuse to deal (or group boycott) will not be allowed under the settlement conditions. On the other hand, unilateral announcements consistent with Colgate and Parke, Davis, without more, do not constitute a situation inconsistent with the antitrust laws.[45/]

Brownsville's second major argument is that the settlement license conditions would have the effect of postponing a remedy to which it is entitled in this proceeding, viz, a finding under Section 105(c)(5) as to whether the activities

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44/ In Parke, Davis, the Government successfully brought a case under Section 1 of the Sherman Act, 15 U.S.C. § 1 (1970), for an agreement between a manufacturer and its wholesalers to refuse to deal with any person violating the manufacturer's policies regarding resale prices. The Court stated that under United States v. Colgate, 250 U.S. 300 (1919), the manufacturer may unilaterally announce its policies, so long as its customers do not agree, either explicitly or implicity, to refuse to deal with any one who would violate those policies. Parke, Davis, 362 U.S. at 37-44. Once there is an agreement to refuse to deal, Section 1 is violated. Id. at 44.

45/ See, e.g., Parke, Davis, supra; Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263, 272, 274-76.

under the licenses, as conditioned, would create or maintain a situation inconsistent with the antitrust laws as specified in Section 105(a).[46/] Nothing, however, precludes Brownsville from seeking a finding under Section 105(c)(5) in a hearing on any issues remaining after the Board's approval of the settlement conditions. If Brownsville were to prevail before this Board in demonstrating that certain activities under the licenses would create or maintain a situation inconsistent with the antitrust laws or their underlying policies, appropriate changes could be made in the settlement license conditions or additional conditions could be added.

An antitrust hearing held now would have little, if any, bearing on future enforcement proceedings at the NRC.[47/] The license conditions do nothing to impair the right of a complaining party to review by the NRC in an enforcement proceeding, with due regard for the substantive antitrust jurisprudence incorporated in Section 105(c), of any continuing refusal to interconnect in the event that FERC does not approve a proposed interconnection. From the point of view of the Staff, this does not constitute any "postponement" of remedy. The regime established in the settlement conditions incorporates the applicable antitrust concepts, and further makes an acknowledgement of the primary areas of responsibility of the NRC and FERC, as suggested by

46/ Comments, at 12-13.

47/ CP condition 3.D(2)(1)(a); STP condition I.B(6)(a).

Section 271 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. § 2018. The conditions provide a means by which a complaining party (which could include the Staff) can enforce the limitations on refusals to interconnect by seeking to demonstrate before the NRC that, despite negative findings by the FERC on the acceptability of an interconnection (and/or wheeling) application, the interconnection is required to remedy a situation inconsistent with antitrust law and policy.

Brownsville's third major argument is that the burden of proceeding under PURPA is considerable enough to discourage any Entity from applying to FERC for an interconnection order.[48/] Brownsville supports this argument by nothing more than a recitation of the standards for interconnection and wheeling orders under PURPA.[49/] These standards reflect a determination by Congress as to objective and reasonable criteria for obtaining an interconnection or wheeling order under PURPA with another, unwilling utility. Further, Staff believes that the burden alleged by Brownsville is neither atypical nor unduly great for electric utilities, which must routinely demonstrate the virtues of their proposed projects to obtain capital funds and, in most cases, to convince utility commissions to include project costs in their rate bases. Nothing asserted by Brownsville demonstrates that these statutory criteria impose an unreasonable burden on Entities seeking an order under PURPA.

48/ Brownsville's Initial Brief, at 30, 32-33.

49/ Id. at 33, n.1.

Despite the settlement conditions' specificity, Brownsville also asserts that HLP's obligation to pay an Entity's costs in connection with its applications under PURPA is "ephemeral".[50/] This assertion rests upon Brownsville's views, analyzed above, as to the burdens under PURPA and its perception that HLP may oppose an application under PURPA "on any grounds so long as they are not patently frivolous."[51/] We have already responded to the argument as to PURPA burdens. As to the grounds on which HLP may oppose a PURPA application, Brownsville has misunderstood STP license condition I.B(6)(a), which states that "HLP agrees that it will not unreasonably oppose any such application." The Staff therefore finds no merit to Brownsville's arguments, but would only point out that NRC enforcement procedures are available to resolve any disputes arising under this condition.

To summarize, there is no demonstrable anticompetitive effect from the continuation of TU's and HLP's non-jurisdictional status under the proposed settlement conditions. Brownsville has admitted that there is no intent *per se* to exclude competition.[52/] The opportunities for non-jurisdictional interconnections under PURPA will allow utilities to obtain alternatives in interstate markets both in and around Texas. Although these options are "non-jurisdictional" ones, this does not diminish the pro-competitive aspects of the settlement or the potential power supply opportunities fostered therein.

50/ *Id.* at 33.

51/ *Id.*

52/ *Id.* at 21-22.

C. Access to Nuclear Power

Participation in baseload nuclear generation, which has certain economies of scale, is provided for in both the South Texas and Comanche Peak conditions. Ownership access to the Comanche Peak units remains essentially the same as in the 1974 construction permit conditions, except as concerns TU's offer of ownership to Tex-La Electric Cooperative of Texas, Inc., an intervenor in these proceedings. Tex-La has entered into a letter of intent with TPL for purchase of an ownership interest in the Comanche Peak units.[53/] The terms and conditions set forth in the letter of intent were reached with the intention of settling the controvery between TPL and Tex-La raised in the Comanche Peak antitrust proceeding.[54/] Having gained an offer of ownership in Comanche Peak (and in consideration of a related power supply agreement which it has negotiated with TPL), Tex-La has stipulated that, to the extent it participates any further in this proceeding, it will defend the conditions should they be challenged.[55/] It should also be noted that Brazos Electric Cooperative and the Texas Municipal Power Agency (TMPA) have become co-owners in Comanche Peak since the original construction permit was issued to TU. Accordingly, the Staff's concerns about alleged monopolization by TU and about participation in the Comanche Peak units have been satisfied, and the new ownership arrangements are expected to promote competition in the North Texas and adjacent areas.

53/ Letter of Intent of May 6, 1980, attached to Tex-La's May 9, 1980 Status Report on Settlement.

54/ Id. at clause XIII.

55/ Stipulation, dated September 12, 1980, among DOJ, NRC Staff, Tex-La, and TU.

To the Staff's knowledge, Brownsville has been the only Entity (other than the present Applicants) which sought an ownership share in the South Texas Project. Brownsville is to be offered access to the South Texas Project by CPL on reasonable terms and conditions and in a reasonable amount computed according to a peak load ratio formula.[56/] CPL's obligation to afford that ownership share to Brownsville is to be reduced, on the basis of a formula provided, to take account of possible sales to Brownsville of an ownership share by HLP, San Antonio, or Austin from their portions of the South Texas Project. Brownsville has until January 1, 1983 to make firm commitments to become an owner.

To facilitate Brownsville's access to the South Texas Project, CPL is also obligated to provide transmission from the plant to Brownsville and to provide Brownsville related coordination services. HLP, San Antonio, and Austin must facilitate, where necessary, Brownsville's access to a South Texas ownership interest and other coordination services from CPL noted above. This should insure that Brownsville's opportunity to have nuclear generation will be both meaningful and effective.[57/] If, as Brownsville apparently fears,[58/] CPL does not make a reasonable offer of participation in the South Texas Project and of transmission services, Brownsville can seek a remedy through an NRC enforcement proceeding. It is, therefore, not necessary for this Board to reach the actual terms and conditions between

56/ STP condition I.B.(1).

57/ Consumers Power Co. (Midland Units 1 and 2), ALAB-452, 6 NRC 892, 949-57, 998-99, 1085, 1100 (1977).

58/ Comments, at 25.

the parties, nor to withhold approval of the settlement conditions until the final contracts are signed. Accordingly, the Staff concludes that such nuclear access with necessary auxiliary services will satisfy the requests of Brownsville itself and will generally promote competition in the South Texas Area.

As to future nuclear units, Applicants in both Comanche Peak and South Texas are required to offer participation in those future units which they may own, construct, and operate to Entities on terms similar to those contained in the settlement license conditions.[59/] This means that competitive opportunities to participate in future baseload nuclear generation in the ERCOT-TIS area will be afforded to all Entities, and that smaller as well as larger utilities will be able to benefit from the economies of scale of such generation.

D. Transmission Services

Access to transmission services is a major key to competition and competitive opportunities in the electric utility industry.[60/] Such services are vital to Entities within ERCOT and SWPP seeking to improve their competitive posture by being able to have power wheeled from suppliers in addition to those by whom they are presently served, and to have power wheeled to other Entities with whom they are not directly interconnected. Applicants are

59/ CP condition 3.D(2)(n); STP condition I.B(8).

60/ Otter Tail Power Co. v. United States, 410 U.S. 366 (1973); Consumers Power Co., supra; Toledo Edison Company, et al. (Davis-Besse and Perry Units), ALAB-560, 10 NRC 265, 328 (1979).

required to "participate in and facilitate" the exchange of power in the South Texas and North Texas Areas, respectively, between any two Entities with which Applicants are connected and to provide the same service between any Entity within the South Texas or North Texas Area and an Entity outside of that area. This obligation to provide transmission services does not distinguish between interstate and intrastate transmission, and is subject only to appropriate limitations, among which are reasonable notice and technical feasibility.

The Staff believes that all Entities in ERCOT and SWPP will benefit from this provision of transmission services by the resulting enhancement of opportunities to seek relationships both with new purchasers and new suppliers. The availability of wheeling is particularly important to Entities which, because they are embedded in the service territory of their suppliers, are "captives" of those suppliers' transmission networks. Many Entities in ERCOT fall into this category, and the availability of wheeling eliminates some of the Staff's concerns raised by monopolization allegations. Further, other obstacles have been removed to facilitate the ability of utilities to seek both short- and long-term alternative power supply options. For example, Entities seeking wheeling do not need to enter into formal arrangements with each utility over whose lines power would have to flow as a prerequisite to requesting transmission by Applicants. It will be sufficient that "permission to utilize such other transmission lines has been requested by the proponent of the arrangement".[61/] In addition, Applicants agree to wheel (and thereby

61/ CP condition 3.D(2)(i); STP condition I.B(3). Emphasis added.

not frustrate transactions) even if the rates are subject to dispute with the requesting Entity.62/

Brownsville addresses a number of complaints to the terms of the September 11, 1980 letter to FERC counsel in Docket No. EL79-8. As noted in Section IIIB above, the commitments in that letter, although referenced in the settlement license conditions, are not before this Board for review. They are referenced because they embody certain principles which the Staff believes would resolve alleged anticompetitive aspects of the proposed DC interconnections. Brownsville is free to have its complaints heard at the FERC, the agency with jurisdiction over the terms and conditions of the interstate interconnection and associated wheeling.63/ And, of course, the FERC may act on the terms and conditions proposed in the September 11, 1980 letter as it deems reasonable under its statutory mandate. The NRC Staff has cooperated with the FERC Staff in the drafting of the September 11, 1980 letter in order that their mutually-held concerns would be addressed in the two simultaneous settlements at the FERC and the NRC.

62/ STP condition I.B(3); CP condition 3.D(2)(i).

63/ Even though some of the power passing over such interconnection may be generated at nuclear plants, the NRC does not thereby automatically acquire jurisdiction over the rates and conditions of that transmission. See Section 271 of the Atomic Energy Act (42 U.S.C. § 2018), which provides in relevant part:

> Nothing in this Act shall be construed to affect the authority or regulations of any Federal, State, or local agency with respect to the generation, sale, or transmission of electric power produced through the use of nuclear facilities licensed by the Commission....

Satisfaction of our group boycott-refusals to deal concerns does not, however, depend upon the FERC's approval of the terms and conditions set forth in the September 11th letter, but rather depends upon the commitments undertaken by the Applicants in the settlement license conditions. Since Brownsville's comments on transmission focus on the September 11, 1980 letter, they are not appropriately before this Board.

E. Joint Planning

Applicants are obligated to afford all Entities in the South Texas and North Texas Areas, respectively, opportunities to participate in any studies and planning of future generation, transmission, and related facilities. In addition, Applicants are obligated to share information with other Entities with respect to joint studies and planning of future generation, transmission, and related facilities.[64/] Applicants are also obligated to support reasonable requests by qualifying Entities for membership in the Texas Interconnected System ("TIS") and any other electric utility planning or operating organization of which Applicants are members.[65/] It has been alleged that certain Entities, notably Brownsville, were improperly and disadvantageously excluded from membership in TIS and, thereby, were denied the benefit of joint planning with the larger Texas systems. Brownsville is now a member of TIS, and the proposed license conditions will ensure that all Entities in ERCOT have rights to membership in any electric planning or operating organization in the ERCOT-TIS area.

64/ CP condition 3.D(2)(b); STP condition I.B(2).

65/ Id.

As the competitive opportunities expand by virtue of the requirements of the South Texas and Comanche Peak licenses, the opportunity to engage in joint studies and planning with the Applicants will become an important means by which smaller Entities within Texas (and the Southwest Power Pool) can improve their system planning and more effectively compete with larger Entities. Brownsville's argument that the Applicants must be required to remain members of TIS and to take only actions advantageous to Brownsville[66/] goes far beyond any reasonable requirement concerning these voluntary planning organizations.

Insofar as transmission planning is concerned, Applicants are required to afford Entities in their respective areas the opportunity to participate in planning of additions to transmission capacity. Applicants must also include such capacity additions in their transmission construction programs as are timely requested by said Entities, subject to reasonable conditions.[67/]

It is also expected that Applicants will include all Entities in their respective geographic areas in the planning of future nuclear units in which Applicants may participate. See discussion under "Nuclear Access" above. This will aid all utilities in making the best economic decisions for their own competitive well-being. Joint planning in ERCOT-TIS should insure, in part, that there are no artificial information barriers which would adversely affect competitive opportunities in the area.

66/ Comments, at 26.

67/ STP condition I.B(4); CP condition 3.D(2)(j)(a).

F. Coordination Services

One of the markets in which TU, HLP and CPL are alleged to be dominant is the market for coordination services. As Entities in their respective service territories seek to avail themselves of new competitive opportunities under the settlement license conditions, they will need to coordinate with Applicants. TU is required to coordinate reserves and sell, purchase, or exchange emergency and/or scheduled maintenance bulk power with any Entity in the North Texas Area, subject to reasonable terms and conditions.[68/] As noted above, under "Nuclear Access", a similar obligation is imposed on CPL (and, as necessary, HLP, San Antonio, and Austin) for the benefit of Brownsville.[69/] The TU companies are further obligated to engage in joint establishment of minimum reserves with any Entity to which they have reserve coordination obligations.[70/] In addition, the reliability of power delivered into TIS-ERCOT over DC interconnections may not be treated differently by Applicants than power generated within TIS-ERCOT for determining required spinning and installed reserves.[71/]

In large measure, the original Comanche Peak construction permit conditions in 1974 addressed the provision of coordination services by TU. This demonstrates the importance which has been placed upon coordination services.[72/] The

68/ CP conditions 3.D(2)(c,d, & h).

69/ STP conditions I.B(1)(c & d).

70/ CP condition 3.D(2)(e).

71/ STP condition I.B.9; CP condition 3.D(2)(e).

72/ See also, Consumers Power Co., supra note 57.

coordination services obligations in the South Texas settlement conditions are principally directed at CPL, since it is the only applicant against whom allegations of denial of coordination services have been made.

Since smaller utilities are often excluded from establishing joint reserve requirements, it is valuable to Entities to be able to participate in the setting of minimum reserve requirements.[73/] The requirement that the Applicants for both Comanche Peak and the South Texas Project treat power imported over the DC interconnections in like manner with power generated within Texas protects Entities against unjustifiably high reserve requirements which discount the availability of the imported power. Also, to the extent that Applicants have excess generating capacity, Entities within Texas and the Southwest Power Pool might be able to use their access to wheeling to enter into coordination arrangements for purposes of meeting their reserve obligations within TIS or SWPP.[74/]

This availability of coordination services satisfies the Staff's concerns about possible monopolization in two ways: (1) it addresses the allegations made by smaller utilities, and (2) it insures meaningful and effective nuclear access by providing general assurances of necessary coordination for smaller utilities.

73/ CP condition 3.D(2)(e); see also STP condition I.B(2).

74/ Indeed, HLP already seeks to assure sufficient reserve levels by purchases from Austin. Deposition Transcript of D. E. Simmons, at 176-77 (Oct. 17, 1979).

G. Full and Partial Requirements Sales of Bulk Power

Many Entities within the service territories of the TU companies and CPL are either full or partial requirements customers of these Applicants. Examples of such relationships are the Tex-La cooperatives with TPL, and Brownsville with CPL. To reasonably assure the availability of wholesale power to such Entities, the settlement license conditions would obligate TU and CPL to sell full and partial requirements bulk power to smaller Entities in their respective areas. TU and CPL are excused from the obligation only if they do not have available sufficient bulk power or adequate transmission to provide the requested service, or if the sale would impair their ability to render adequate and reliable service to their customers.[75/]

Limitation of the reach of the license conditions respectively to the North Texas and South Texas Areas is not, as alleged by Brownsville,[76/] a sanction of a division of markets. Rather, it is simply a reflection of the geographic patterns of large generating utilities and connections for the delivery of power. Furthermore, the wheeling provisions of the settlement conditions would open up options for obtaining new supplies of wholesale power. Brownsville argues that HLP should also be subject to the bulk power condition of the South Texas license.[77/] HLP, however, has only one wholesale customer, Community Public Service, and the Staff is not aware of any allegation in

75/ CP condition 3.D(2)(k); STP condition I.B(5).

76/ Comments, at 27.

77/ Id.

this proceeding of misuse of monopoly power by HLP against its present or potential wholesale customers.

With this assurance of obtaining the wholesale power needed, Entities are freer to explore a variety of options for meeting their energy requirements and their demand growth. TPL, for example, may provide the Tex-La Cooperatives with such power as they require in excess of their Comanche Peak and other generating capacity.[78/] By virtue of the conditions, Brownsville can receive necessary supplemental wholesale power from CPL in addition to the power produced from its own generation entitlements, such as that in the South Texas Project. The settlement conditions also provide assurances of full requirements bulk power (subject to availability) to Entities which decide to remain non-generating utilities or those which decide to reduce their reliance on self-generation.

If CSW is engaging in central economic dispatch of generation among its subsidiaries to comply with the requirements of the Public Utility Holding Company Act of 1935,[79/] CPL may first use its own particular generation and transmission facilities to accomplish such centralized economic dispatch before those facilities are made available to satisfy its bulk power obligations under the settlement conditions. Other CSW capacity, however, will become available by virtue of the centralized economic dispatch system and CPL's participation. Hence, the settlement conditions provide that CPL

78/ Letter of Intent, supra note 53, at 6.

79/ 15 U.S.C. § 79, et seq.

must, in that circumstance, meet its bulk power obligations from either its own capacity or the available capacity in the other CSW companies. The provision in the South Texas settlement conditions acknowledges that the SEC may require the operating subsidiaries of the CSW system to have priority with respect to their system-wide economic dispatch of generating units. This recognizes the principle of comity among federal agencies and allows CPL flexibility in selecting which power can be used to supply the qualifying Entity without reducing its obligations under the conditions. Brownsville's assertion of discriminatory treatment[80/] and its argument that CPL must engage in central economic dispatch with Brownsville[81/] are not meritorious. No discriminatory treatment is suggested by the conditions and, as to the second point, no factual allegations have been made to support inclusion of Brownsville in CPL's generation dispatch program.

As noted above, CPL's and TU's obligations to provide full and partial requirements power are subject to the availability of bulk power, the availability of transmission capacity, and the ability of CPL and TU to render adequate and reliable service to their customers. These exceptions are in accord with good utility practice and prevailing law. We nevertheless expect that sufficient bulk power and adequate transmission to render any service requested would be available by virtue of the joint planning that would have already been taking place in the ERCOT-TIS area. Thus, there should not be any impairment to the reliability and adequacy of service to

80/ Comments, at 27-28.

81/ Id. at 28.

CPL's and TU's customers as a result of the provision of bulk power to qualifying Entities. In the unlikely event that a curtailment of actual bulk power sales becomes necessary under operative conditions, it must be on a reasonable and nondiscriminatory (where possible) basis.

These provisions are yet another means to alleviate the Staff's concerns about preserving and promoting competition in ERCOT-TIS. The availability of full and partial requirements power insures that smaller utilities can make meaningful strides towards self-generation, should their economic decisions favor that power supply option.

IV. POSSIBLE FURTHER PROCEEDINGS

The Board directed Brownsville, as the only party asserting the need for a hearing, to address in its Comments the "jurisdictional" aspects and the "procedural and other requirements"[82/] related to such a hearing. The Board also stated that other parties should respond to Brownsville's comments.[83/]

Brownsville has not addressed the nature of a further hearing at great length.[84/] Brownsville does note, however, that many of its objections may be susceptible of disposition on the pleadings at such a future, evidentiary

82/ Prehearing Conference Tr., at 1254 (October 24, 1980).

83/ Id.

84/ Comments, at 6-7.

stage. The Staff concurs.[85/] Many of the issues raised in Brownsville's Comments (as well as its Motion and Initial Brief) seem to be of a nature that can be disposed of on the pleadings, e.g., that unilateral disconnection or refusal to interconnect as permitted under the settlement conditions is inconsistent with the antitrust laws.[86/] On the other hand, there may be some issues raised by Brownsville which require determination of factual matters and which the Board will not be able to dispose of on the basis of Brownsville's pleadings and the other parties' responses. We agree with Brownsville that, because there are issues which may be disposed of on the pleadings, the Board should defer ruling on any further proceedings until it has issued its order with respect to approval and implementation of the settlement license conditions.[87/]

85/ Summary disposition procedures are available under 10 C.F.R. § 2.749 to aid the Board in refining those issues on which a future, evidentiary hearing under Section 105c(5) might be held.

86/ Id. at 11-12.

87/ See Brownsville's Comments, at 6. The Board would have available to it the full range of powers conferred by the Commission's Rules and Regulations for determining the nature of any hearing which may be held, e.g., summary disposition under 10 C.F.R. § 2.749 and the specification of issues and amendment of contention pleadings under 10 C.F.R. § 2.752.

V. CONCLUSION

For the reasons set forth above, the NRC Staff moves the Board to approve the proposed settlement conditions in the South Texas and Comanche Peak proceedings and to make them effective immediately.

Respectfully submitted,

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Dated at Bethesda, Maryland
this 3rd day of December, 1980.

POOR ORIGINAL

September 12, 1980

LICENSE CONDITIONS FOR SOUTH TEXAS PROJECT
UNITS NOS. 1 AND 2

I. A. The following definitions apply to paragraph I.B:

(1) "Applicants" means severally and jointly Houston Lighting and Power Company (HLP), Central Power and Light Company (CPL), City Public Service Board of San Antonio (CPSB), and the City of Austin Electric Utility Department (COA) and any of their respective successors, assignees, or subsidiaries engaged in the generation, transmission or the distribution of electric power. Where a license condition is directed to a specific Applicant, that Applicant is identified.

(2) "South Texas Area" means (a) those counties in which Applicants serve electric customers at wholesale or retail, and (b) those other areas, if any, surrounded by the areas in (a) above.

(3) "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association of any of the foregoing owning, operating, or contractually controlling or proposing in good faith to own, operate, or contractually control facilities for generation, transmission or distribution of electric power and energy for the purpose of providing electric utility service.

(4) "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

(5) "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

(6) The terms "connection" and "interconnection" are used interchangeably.

B. The Applicants defined in paragraph I.A.(1) are subject to the following antitrust conditions:

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I. B. (1) (a) CPL shall afford to the Public Utilities Board of the City of Brownsville an opportunity to participate in the South Texas Project, Units 1 and 2, on reasonable terms and conditions and in accordance with the South Texas Project Participation Agreement and on a basis that will fully compensate CPL for its actual costs, provided that Brownsville must enter into a firm commitment to acquire the ownership interest made available to it by the terms of this paragraph no later than January 1, 1983. The ownership interest which CPL shall make available to Brownsville shall be computed by multiplying CPL's Generation Entitlement Share in STP Units 1 and 2 by the ratio of Brownsville's peak demand for 1980 to CPL's peak demand for 1980. In the event Brownsville obtains an ownership interest from any Applicant other than CPL, the ownership interest which CPL must make available to Brownsville hereunder shall be reduced by one megawatt for each megawatt in excess of 12 megawatts that Brownsville acquires from other Applicants. Applicants shall not exercise any rights of first refusal over Brownsville's efforts to participate in the South Texas Project to the extent of the first 50 MW of such ownership share.

(b) CPL shall afford Brownsville reasonable transmission services to enable it to obtain delivery of power from the STP, provided that CPL is fully compensated for its costs of such transmission services plus a reasonable return on investment, and provided further that in the event transmission capacity is not available to provide such transmission services, the provisions of Paragraph I.B. (4) hereof define the extent of the obligation which CPL has with respect to the construction of additional transmission facilities necessary to provide such transmission service.

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(c) CPL will also afford all reasonable coordination services (including but not limited to reserve sharing, back-up power, maintenance power and emergency power) necessary for Brownsville to have effective access to power from STP obtained from CPL, provided that CPL is fully compensated for its costs of providing such coordination services plus a reasonable return on investment.

(d) Each Applicant shall facilitate where necessary Brownsville's obtaining the participation interests and services specified in paragraphs 1(a), 1(b) and 1(c) above.

(2) The Applicants, as long as they are members of the Texas Interconnected Systems (TIS) or any other organization which considers the planning for or operations of ERCOT-TIS electric utilities, shall support reasonable requests by Entities in the South Texas Area having generation capacity for membership in TIS or such other organizations. The Applicants shall also propose and actively support, as long as they are members thereof, the creation of one or more additional classifications of TIS membership, based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the South Texas Area who desire membership. The Applicants shall share information with other Entities with respect to, and shall conduct with other such Entities through any electric utility planning organizations of which the Applicants are members, joint studies and planning of future generation, transmission and related facilities; provided, however, that this condition shall not obligate the Applicants to conduct such joint studies or joint planning unless (1) the studies or planning are requested and carried out in good faith and based on reasonably realistic and reasonably complete data or projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded

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proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.

(3) Each Applicant shall participate in and facilitate the exchange of bulk power by transmission over its own transmission facilities between or among two or more entities in the South Texas Area with which the Applicant is connected; and between any such Entity(ies) and any Entity(ies) outside the South Texas Area between whose facilities the Applicant's transmission lines and other transmission lines, including direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint, and (iii) any Entity(ies) requesting such transmission arrangements shall have given reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate an Applicant for its costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to the jurisdiction of the appropriate regulatory agency(ies). Where the rates to be charged are subject to the jurisdiction of an appropriate regulatory authority, the Applicants shall not refuse to provide such transmission services merely because the rate(s) to be charged therefor are the subject of dispute with such Entity(ies). An Applicant shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded other transmission may be for emergency use and operated either unloaded or partially loaded.

(4) Each Applicant shall include in its planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraph I.B.(3) (and I.B.(5) for CPL), provided any Entity(ies)

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in the South Texas Area gives an Applicant sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates an Applicant for its costs including a reasonable return on investment.[1/] An Applicant shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of the obligations above, an Applicant shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construciton of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to its share of the cost of the addition Any such contribution made in aid of construction or ownership interest shall also be properly credited in determining any wheeling charges. If an Applicant engages in joint ownership of transmission lines with any other Entity(ies), it shall not refuse to engage in similar transactions in comparable circumstances with other Entities, subject to the provisions limiting an Applicant's obligations above.

I. B. (5) CPL shall, upon reasonable advance notice, enter into arrangements for the sale of full and partial requirements bulk power pursuant to a filed tariff to any requesting Entity having a non-aggregated generating capacity of 200 megawatts or less under reasonable terms and conditions which shall include a provision for CPL to recover its costs of providing such service plus a reasonable return on investment. Such tariff shall not require CPL to enter into any arrangement for such sale(s) if (a) it does not have available sufficient bulk power or adequate transmission to provide the requested service; or (b) the sale would impair CPL's ability to render adequate and reliable service to its own customers or its ability to discharge prior commitments. It is expressly recognized,

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1/ Nothing in this paragraph shall require CPSB or COA to undertake any action(s) which may be contrary to any state constitutional provision.

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and such tariff may reflect, that the determination whether sufficient bulk power or adequate transmission is available to accommodate a request for full or partial requirements bulk power will consider and recognize that (1) CPL will be engaging in centralized economic dispatch with its affiliates in accordance with, and pursuant to the requirements of, the Public Utility Holding Company Act of 1935, (2) pursuant to such requirements CPL may first utilize its generating and transmission capacity to accomplish such centralized economic dispatch before its generating and transmission capacity is made available for full or partial requirements bulk power sales under the tariff, and (3) if other CSW system capacity becomes available by reason of CPL's participation in such centralized economic dispatch, then such other CSW system capacity will, at the option of CSW, be made available in lieu of CPL's obligation to provide such capacity. Any curtailment of CPL's full or partial requirements sales shall be on a reasonable and non-discriminatory (where possible) basis.

(6)(a) In connection with the performance of its obligations herein and subject to the provisions of this paragraph, HLP shall not disconnect from or refuse to connect its then-existing or proposed facilities with the facilities of any Entity used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, and HLP will not prevent any Entity with which it maintains connections from establishing, maintaining, modifying or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reasons of the interstate character of such facilities, provided that, anything in these license conditions to the contrary notwithstanding (but subject to subparagraphs 6(b) and 6(d) below) any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of HLP under the Federal Power Act shall have filed an appli-

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cation with and used its best efforts to obtain an order from the FERC, applicable to HLP under Sections 210, 211 and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an application pursuant to this subparagraph, HLP agrees that it will not unreasonably oppose any such application. In the event such application is denied by a valid order of the FERC, any continuing refusal by HLP to establish, maintain, modify or utilize such connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the HLP in such NRC proceeding.

(6)(b) HLP shall not enter into or maintain any agreement or understanding with another Entity or Applicant to refuse to deal with any other Entity(ies) or Applicant(s) with the purpose of maintaining an exemption from jurisdiction under the Federal Power Act, and in the event that HLP refuses to make an interconnection with or chooses to disconnect from any Entity (ies), such decision and/or action by HLP will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after HLP decides to undertake such action, it may notify any affected Entity of its decision.

(6)(c) In the event that an Entity files an application pursuant to subparagraph (a) of this paragraph solely by reason of HLP's desire to maintain its exemption from jurisdiction under the Federal Power Act, HLP agrees to pay such Entity's reasonable expenses in connection

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with such application and the ensuing proceeding,1/ provided, however, that HLP shall not be required to pay for any expenses of such Entity if that Entity's application is denied by FERC for reasons advocated by HLP at FERC, and provided further, that HLP shall not be required to pay for any costs or expenses of such Entity which that Entity would have incurred had it not filed an application solely by reasons of HLP's desire to maintain its exemption from jurisdiction under the Federal Power Act.

(6)(d) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connection with any Entity(ies), provided that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.

(7) HLP agrees to use its best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraphs (6)(a) and (6)(b) hereof.

(8) If Applicants participate in any future nuclear units other than those which are now under construction or for which an application for a construction permit has been filed, they will afford similar participation to Entities in the South Texas Area on a reasonable basis.

(9) Applicants agree that the reliability of power delivered into TIS-ERCOT over DC asynchronous connections shall not be treated differently by the Applicants, for purposes of

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1/ This obligation shall not apply to the expenses of Central and South West Corporation or Texas Utilities Company or any of their respective subsidiaries, including but not limited to the expenses of CSW and any of its subsidiaries incurred in FERC Docket No. EL79-8.

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spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT. Outages on DC asynchronous connections shall be treated by the Applicants in the same way as losses of generation within TIS-ERCOT. Applicants agree to support the adoption of principles involving DC asynchronous connections contained in this paragraph within any TIS or ERCOT organization.

(10) HLP and CPL shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among HLP, Central and South West Corporation, Texas Utilities Company and the FERC staff, dated September 11, 1980. HLP and CPL shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. Nothing herein shall preclude the Department of Justice from instituting or intervening in any proceeding at FERC, including Docket No. EL79-8, and from presenting such arguments and evidence that it deems appropriate.

(11) The foregoing conditions shall be implemented (1) in a manner consistent with applicable Federal, state and local statutes and regulations, and (2) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.

LICENSE CONDITIONS FOR
COMANCHE PEAK STEAM ELECTRIC STATION
NUCLEAR UNITS NOS. 1 AND 2

D. (1) The following definitions apply to paragraph 3.D.(2):

(a) "Applicants" means severally and jointly Texas Utilities Generating Company, Dallas Power & Light Company, Texas Electric Service Company, Texas Power & Light Company, Texas Utilities Company and each other subsidiary, affiliate or successor company now or hereafter engaged in the generation, transmission and/or the distribution of electric power in the State of Texas.

(b) "North Texas Area" means the following Texas counties: Anderson, Andrews, Angelina, Archer, Bastrop, Baylor, Bell, Borden, Bosque, Brown, Burnet, Cherokee, Clay, Coke, Collin, Comanche, Cooke, Coryell, Crane, Culberson, Dallas, Dawson, Delta, Denton, Eastland, Ector, Ellis, Erath, Falls, Fannin, Fisher, Freestone, Gaines, Glasscock, Grayson, Henderson, Hill, Hood, Hopkins, Houston, Howard, Hunt, Jack, Johnson, Kaufman, Kent, Lamar, Lampasas, Leon, Limestone, Loving, Lynn, Martin, McLennan, Midland, Milam, Mitchell, Montague, Nacogdoches, Navarro, Nolan, Palo Pinto, Parker, Pecos, Rains, Reagan, Red River, Reeves, Rockwall, Rusk, Scurry, Schackelford, Smith, Somervell, Stephens, Sterling, Tarrant, Terry, Tom Green, Travis, Upton, Van Zandt, Ward, Wichita, Wilbarger, Williamson, Winkler, Wise, Wood, and Young.

(c) "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning or operating or contractually controlling, or proposing in good faith to own or operate or contractually control, facilities for generation of electric power and energy; provided, however, that as used in paragraphs 3.D.(2)(a), 3.D.(2)(b), 3.D.(2)(g), 3.D.(2)(i), 3.D.(2)(j)(a) and (b), 3.D.(2)(k), 3.D.(2)(l) and 3.D.(2)(m), "Entity" means an electric utility which is a person, a private or public corporation, a governmental agency or authority, a municipality, a cooperative, or an association owning or operating, or proposing in good faith to own or operate, facilities for generation, transmission and/or distribution of electric power and energy.

(d) "Entity in the North Texas Area" means an Entity which owns or operates facilities for the generation, transmission and/or distribution of electric power in any area within the North Texas Area.

(e) "Bulk Power" means the electric power and/or electric energy supplied or made available at transmission or subtransmission voltages.

(f) "Costs" means all appropriate operating and maintenance expenses and all ownership costs where applicable.

(g) The terms "connection" and "interconnection" are used interchangeably.

(2) The Applicants defined in Paragraph 3.D.(1)(a) are subject to the following antitrust conditions:

(a) The Applicants shall afford an opportunity to participate in the Comanche Peak Steam Electric Station, Units 1 and 2, for the term of the instant license, or any extension or renewal thereof, to any Entity(ies) in the North Texas Area making a timely request therefor, through a reasonable ownership interest in such unit(s) on reasonable terms and conditions and on a basis that will fully compensate Applicants for their costs. It is understood that any request received prior to December 1, 1973, shall be deemed to be timely. In connection with such participation, the Applicants also will interconnect with and offer transmission service as may be required for delivery of such power to such Entity(ies) at a point or points on the Applicants' system on a basis that will fully compensate the Applicants for their costs including a reasonable return on investment. Notwithstanding the December 1, 1973 date appearing hereinabove, the Applicants' offer of participation in Comanche Peak, Units 1 and 2, to Tex-La Electric Cooperative of Texas, Inc. shall not obligate the Applicants, by virtue of such offer, to offer an opportunity to participate in Comanche Peak, Units 1 and 2, to any other Entity.

(b) The Applicants, as long as they are members of the Texas Interconnected Systems (TIS), shall support reasonable requests by Entities in the North Texas Area having generating capacity for membership in TIS. The Applicants shall also propose and actively support, as long as they are members thereof, the creation of one or more additional classifications of TIS membership based on non-discriminatory criteria to afford access to data, studies and recommendations to all Entities in the North Texas Area who desire membership. The Applicants shall also support requests by qualified Entities in the North Texas Area for membership in any other electric utility planning or operating organization of which the Applicants are members (other than one involving only the Applicants). The Applicants shall share information with other Entities with respect to, and shall, with other such Entities through any electric utility planning organizations (other than one involving only the Applicants) of which the Applicants are members, conduct and/or participate in joint studies and planning of future generation, transmission and related facilities; provided, however, this condition shall not obligate the Applicants to conduct or participate in such joint studies or joint planning unless (1) the studies or planning are requested and conducted in

good faith and are based on reasonably realistic and reasonably complete data and projections, (2) the studies or planning are reasonably justified on the basis of sound engineering principles, (3) appropriate protection is accorded proprietary or other confidential business and financial information, and (4) the costs for such studies or planning are allocated on a fair and equitable basis.

(c) The Applicants will connect with, coordinate reserves, and sell, purchase or exchange emergency and/or scheduled maintenance bulk power with any Entity(ies) in the North Texas Area on terms that will provide for the Applicants' costs, including a reasonable return on investment, in connection therewith and allow such Entity(ies) full access to the benefits of such reserve coordination.

(d) Emergency service and/or scheduled maintenance service to be provided by each party shall be furnished to the fullest extent available from the supplying party and desired by the party in need. If requested, Applicants shall exchange maintenance schedules with any Entity in the North Texas Area. The Applicants and each such Entity(ies) shall provide to the other emergency service and/or scheduled maintenance service if and when available to the extent they can do so without unreasonably impairing service to their customers including other electric systems to whom they have firm commitments. Any curtailment or refusal to provide such emergency and/or scheduled maintenance service shall be on a non-discriminatory basis.

(e) The Applicants and the other party(ies) to a reserve sharing arrangement shall from time to time jointly establish the minimum reserves to be installed and/or provided under contractual arrangements as necessary to maintain in total a reserve margin sufficient to provide adequate reliability of power supply to the interconnected systems of the parties in accordance with good industry practice as developed in the area. Unless otherwise agreed upon, minimum reserve requirements shall be calculated as a percentage of each party's estimated net peak load demand (taking into account firm sales and firm purchases). No party to the arrangement shall be required to maintain greater reserves than the percentage which results from the aforesaid calculation. The reliability of power delivered into TIS-ERCOT over dc asynchronous connections shall not be treated differently by the Applicants, for purposes of spinning and installed reserve calculations and requirements, than would be the case if such power originated within TIS-ERCOT. Outages on dc asynchronous connections shall be treated by the Applicants the same as losses of generation within TIS-ERCOT. The Applicants agree to support the adoption of principles involving dc asynchronous connections contained in this paragraph within any TIS or ERCOT organization.

(f) The parties to such a reserve sharing arrangement shall provide such amounts of spinning reserves as may be equitable and adequate to avoid the imposition of unreasonable demands on the other party(ies) in meeting the normal contingencies of operating its (their) system(s). However, in no circumstances shall such reserve requirement exceed the installed reserve requirement.

(g) Interconnections with any Entity will not be limited to low voltages when higher voltages are requested and are available from the Applicants' installed facilities in the area where a connection is desired, when the proposed arrangement is found to be technically and economically feasible. Control and telemetering facilities shall be provided as required for safe and prudent operation of the interconnected systems.

(h) Interconnection and coordination agreements shall not embody any restrictive provisions pertaining to intersystem coordination. Good industry practice as developed in the area from time to time (if not unreasonably restrictive) will satisfy this provision.

(i) The Applicants shall participate in and facilitate the exchange of bulk power by transmission over the Applicants' transmission facilities between or among two or more Entities in the North Texas Area with which the Applicants are connected, and between any such Entity(ies) and any Entity(ies) outside the North Texas Area between whose facilities the Applicants' transmission lines and other transmission lines, including any direct current (asynchronous) transmission lines, form a continuous electrical path; provided, that (i) permission to utilize such other transmission lines has been requested by the proponent of the arrangement, (ii) the arrangements reasonably can be accommodated from a functional and technical standpoint and (iii) any Entity(ies) requesting such transmission arrangements shall have given Applicants reasonable advance notice of its (their) schedule and requirements. Such transmission shall be on terms that fully compensate the Applicants for their costs including a reasonable return on investment; provided, however, that such transmission services and the rates to be charged therefor shall be subject to any regulatory agency(ies) having jurisdiction thereof. The Applicants shall not refuse to provide such transmission service merely because the rates to be charged therefor are the subject of dispute with such Entity. The Applicants shall not be required to enter into any arrangement which would unreasonably impair system reliability or emergency transmission capacity, it being recognized that while some transmission may be operated fully loaded, other transmission may be for emergency use and operated either unloaded or partially loaded. (The foregoing applies to any Entity(ies) to which the Applicants may be connected in the future as well as those to which they are now connected.)

(j)(a) The Applicants shall include in their planning and construction programs sufficient transmission capacity as required for the transactions referred to in paragraphs (i) and (k), provided any Entity(ies) in the North Texas Area gives the Applicants sufficient advance notice as may be necessary to accommodate its (their) requirements from a functional and technical standpoint and that such Entity(ies) fully compensates the Applicants for their costs including a reasonable return on investment. The Applicants shall not be required to construct transmission facilities if construction of such facilities is infeasible, or if such would unreasonably impair system reliability or emergency transmission capacity. In connection with the performance of their obligations above, the Applicants shall not be foreclosed from requiring a reasonable contribution in aid of construction or from making arrangements for coordinated construction of future transmission lines such that each of the parties to the transaction would own an interest in or a segment of the transmission addition in proportion to its share of the cost of the addition. Any such contribution made in aid of construction or ownership interest shall be properly credited in determining any wheeling charges. If the Applicants engage in joint ownership of transmission lines with any other Entity, they shall not refuse to engage in similar transactions in comparable circumstances with other Entities, subject to the provisions limiting the Applicants' obligations above.

(j)(b) Applicants shall provide other Entities with reasonable access to any future interstate interconnection facilities which Applicants may own, on terms and conditions comparable to the provisions of paragraph D.2(i) hereof, and subparagraph (a) of this paragraph.

(k) The Applicants shall, upon reasonable advance notice, sell full and partial requirements bulk power to requesting Entities in the North Texas area having, on the date of this License, non-aggregated generating capacity of less than 200 MW (including no generating capacity) under reasonable terms and conditions, which shall provide for recovery of Applicants' costs, including a reasonable return on investment. The Applicants shall not be required to make any such sale if they do not have available sufficient bulk power or adequate transmission to provide the requested service or if the sale would impair their ability to render adequate and reliable service to their own customers or their ability to discharge prior commitments.

(l)(a) In connection with the performance of their obligations herein and subject to the provisions of this paragraph, the Applicants will not disconnect from or refuse to connect their then-existing or proposed facilities with the facilities of any Entity, used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such

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facilities, and the Applicants will not prevent any Entity with which they maintain connection from establishing, maintaining, modifying, or utilizing a connection with facilities used or proposed to be used for the transmission of electric energy in interstate commerce by reason of the interstate character of such facilities, provided that, anything in these License Conditions to the contrary notwithstanding (but subject to paragraph I(b) and I(d) below), any Entity seeking to establish, maintain, modify or utilize any connection which could affect the nonjurisdictional status of the Applicants under the Federal Power Act shall have filed an application with and used its best efforts to obtain an order from the Federal Energy Regulatory Commission, applicable to the Applicants under Sections 210, 211 and 212 of such Act, requiring the establishment, maintenance, modification or utilization of such connection. In the event that an Entity files an application pursuant to this subparagraph, the Applicants agree that they will not unreasonably oppose any such application. In the event such application is denied by a valid order of the Federal Energy Regulatory Commission, any continuing refusal by the Applicants to establish, maintain, modify or utilize such connection with such Entity shall be subject to review by the NRC in accordance with the Atomic Energy Act of 1954, as amended, and the rules and regulations thereunder, to determine whether any such refusal would create or maintain a situation inconsistent with the antitrust laws or the policies thereunder in accordance with the standards set forth in Section 105 of such Act; provided that all factual determinations by the FERC on any cost or system reliability reason(s) for any such refusal shall not be subject to redetermination by the NRC. The burden of proof will be on the Applicants in such NRC proceeding.

(I)(b) Applicants shall not enter into or maintain any agreement or understanding with any other Entity(ies) to refuse to deal with another Entity(ies) with the purpose of maintaining an exemption from jurisdiction under the Federal Power Act, and in the event that Applicants refuse to make an interconnection with or choose to disconnect from any Entity(ies), such decision and/or action by the Applicants will be undertaken unilaterally, not jointly, and without consultation with any other Entity(ies), provided, however, that after Applicants decide to undertake such action, they may notify any affected Entity.

(i)(c) In the event that an Entity files an application pursuant to subparagraph (a) of this paragraph solely by reason of Applicants' desire to maintain their exemption from jurisdiction under the Federal Power Act, Applicants agree to pay such Entity's reasonable expenses in connection with such application and the ensuing proceeding 1/, provided, however, that Applicants shall not be required to pay for any expenses of such Entity if that Entity's

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1/ This obligation shall not apply to the expenses of the Central & South West Corporation or Houston Industries or any of their respective subsidiaries, including, but not limited to, the expenses of Central & South West Corporation and any of its subsidiaries incurred in FERC Docket No. EL79-8,

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application is denied by FERC for reasons advocated by Applicants at FERC, and provided further, that Applicants shall not be required to pay for any expenses of such Entity which that Entity would have incurred had it not filed an application solely by reason of Applicants' desire to maintain their exemption from jurisdiction under the Federal Power Act.

(l)(c) Nothing in these License Conditions shall impair the right of the Department of Justice or any other Entity, public or private, to file an antitrust action in any Federal Court in the event any Applicant refuses to establish, maintain, modify or utilize any connection with any Entity(ies), provided, that nothing herein shall preclude any Applicant from raising any legal or equitable defense that may be available to it.

(m) Applicants agree to use their best efforts to amend any agreements with all Entities to ensure that such agreements are not inconsistent with paragraph 3.D.(2)(I)(a) and (b) above.

(n) The Applicants will, in accordance with applicable law, allow ownership participation in future nuclear generating facilities which they may construct, own, and operate in the State of Texas on conditions similar to these License Conditions.

(o) Applicants shall use their best efforts to modify the Offer of Settlement filed in FERC Docket No. EL79-8 to include each of the undertakings set forth in the letter agreement among Applicants, Central & South West Corporation, Houston Lighting & Power Company and the FERC Staff dated September 11, 1980; Applicants shall thereafter use their best efforts to secure approval thereof by the FERC, and shall abide by any valid order(s) of the FERC issued pursuant to the Offer of Settlement. 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.

(p) The foregoing conditions shall be implemented (i) in a manner consistent with applicable Federal, state and local statutes and regulations and (ii) subject to any regulatory agency having jurisdiction. Nothing herein shall preclude the Applicants from seeking an exemption or other relief to which they may be entitled under applicable law or shall be construed as a waiver of their right to contest the applicability of the license conditions with respect to any factual situation.

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September 11, 1980

John A. Cameron, Jr., Esq.
Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Room 8712
Washington, D.C. 20426

Dear Mr. Cameron:

In order to avoid any possible misunderstandings, we wish to confirm our understanding of the FERC Staff's settlement demands in Docket No. EL79-8.

The FERC Staff will, on the date set for filing comments, affirmatively support the Offer of Settlement tendered by Central and South West Corporation (CSW), et al., in Docket No. EL79-8, dated July 28, 1980, (herein "Offer of Settlement") and withdraw the proposed Transmission Service Settlement Agreement sent out under your cover letter of July 3, 1980, if the following modifications are made to the Offer of Settlement by CSW, Texas Utilities Company (TU), and Houston Lighting & Power Company (HL&P). However, it is understood that no provision of the Offer of Settlement, as modified, shall be construed to affect the rights or obligations of the FERC Staff or any party hereto in any future proceedings at the FERC, to investigate or contest any rate filing made pursuant to the following paragraphs. The FERC Staff makes it clear that this letter is without prejudice to any FERC Staff request that additional relief be ordered in Docket No. EL79-8 against electric utilities other than CSW, TU and HL&P.

"System" as used herein means, respectively, (a) HL&P, (b) all TU operating companies, (c) CSW operating companies in the Electric Reliability Council of Texas (ERCOT), (d) CSW operating companies in the Southwest Power Pool (SWPP).

(1) Rates and service shall be determined from time to time in accordance with the procedures of Sections 205 and 206 of the Federal Power Act, whether or not otherwise applicable, by virtue of agreement of the parties pursuant to Section

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211(d)(3) of the Federal Power Act, as amended. Each System agrees to file rates with the FERC, deemed to be rate increase filings pursuant to Section 205(e) of the Federal Power Act, for wheeling power to, from, and over the proposed direct current (DC) interconnection facilities which will:

(a) roll in each System's alternating current (AC) and DC transmission costs, if any, with the result that any utility using any System's AC or DC lines, or both, for wheeling power in interstate commerce will pay a rate designed to recover all costs and a reasonable return on both the AC and DC investment and related operating costs;

(b) be the same for that System regardless of whether the interstate movement comes over the North or the South interconnection;

(c) be the same for that System regardless of the distance involved of the actual transmission over that System's lines;

(d) or may, distinguish between types of service (e.g. economy, interruptible, firm) and length of service (e.g. short term to multiyear);

(e) be filed at the FERC at least one year before the DC lines go into operation, under the terms and conditions in paragraph 13 of the proposed order contained in the Offer of Settlement, which means that the initial rate will go into effect subject to refund, if the Commission orders a hearing on the rates;

(f) not include rates for wheeling of power solely within ERCOT-TIS which does not involve the proposed DC interconnection. However, the CSW ERCOT operating companies, being subject to FERC jurisdiction, will file, within three months of a final FERC order in Docket No. EL79-8 no longer subject to judicial review, a proposed wheeling tariff, to be collected subject to refund, applicable to wheeling within ERCOT-TIS for utilities in ERCOT with less than 1500 MW load, consistent with this paragraph (1) and with paragraph (2) below;

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(g) be designed by each System to recover all of its costs and a reasonable return for the use of its AC and DC facilities;

(h) be a single rate for each type of service over the TU System's combined transmission facilities, the CSW ERCOT System's combined transmission facilities, and the CSW SWPP System's combined transmission facilities. Thus, a wheeling customer would pay a single rate to each such System for a transaction utilizing all or any part of the combined transmission facilities of the TU System, the CSW ERCOT System, and the CSW SWPP System, respectively. The single rates will be based upon the transmission costs per kw of system load for each company within the TU System, the CSW ERCOT System and the CSW SWPP System, respectively, which costs shall be multiplied by the ratio of power flow over each such company's transmission system to the power flow over all or any part of the combined transmission facilities of the respective System, such flows being determined by a composite of typical wheeling transactions over the respective Systems. The single rate for each System shall then be determined by adding together the resulting weighted transmission costs for each company within that System (as calculated per the preceding sentence), to which appropriate transmission losses shall be added;

(i) be in lieu of any "contract path" or similar theory for determining which utility or utilities within ERCOT-TIS are entitled to be paid for wheeling. The method for determining the amount of kilowatts or kilowatthours for billing purposes shall be the calculated load flow through each System with and without the proposed wheeling using the TIS computer programs and data base, as revised from time to time to reflect current and projected systems. Whenever any System is requested to wheel power, such System will provide a load flow analysis at cost within two working days of the request or upon payment of costs, whichever is later. (It is all Systems' belief that a single load flow study would suffice for all potentially affected companies

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in ERCOT-TIS, since the data base is common and coordinated regularly with all relevant systems.); and

(j) provide for interstate economy interchange and emergency power transmission service, which may be requested on an hour-to-hour basis, in accordance with good utility practice in the area.

(2) Whenever any System has been requested to wheel, it will respond with an answer to the request (including an explanation of any denial of service) as follows (dating from the completion of the load flow study for wheeling within ERCOT-TIS, or from the date of a request for wheeling by CSW SWPP):

(a) for transmission service lasting for one or more years, within thirty days, or the first working day after thirty calendar days; and

(b) for transmission service lasting for less than one year, within two working days.

(3) As part of their respective wheeling rates filed pursuant to paragraphs (1) and (6), HL&P and CSW will each reserve 15% of the capacity in their respective DC interconnection facilities for firm power wheeling (herein "the reservation") pursuant to the following:

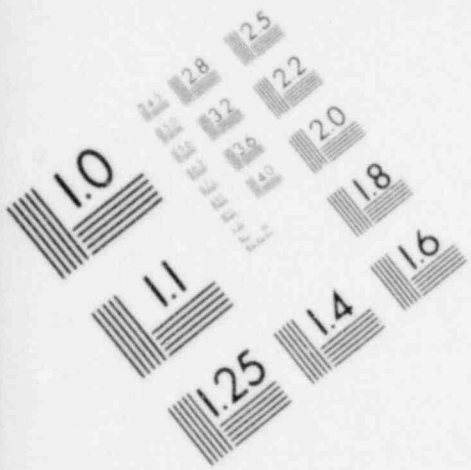
(a) the reservation shall be made for utilities in ERCOT and SWPP having loads less than 500 MW (herein "qualified utilities");

(b) the reservation shall continue for five years after each facility goes into commercial operation at its rated capacity. At the end of the five year period, HL&P or CSW, or both, may file pursuant to the procedures set forth in the first sentence of paragraph (1), supra, as a change in service, to delete the reservation for qualified utilities;

(c) CSW companies shall make reservation capacity available for firm power wheeling in each of their DC interconnection facilities, so long as there is capacity available in either of them; when either of the DC interconnection facilities is out of service, CSW shall not be obligated to make reservation capacity

IMAGE EVALUATION
TEST TARGET (MT-3)

6″



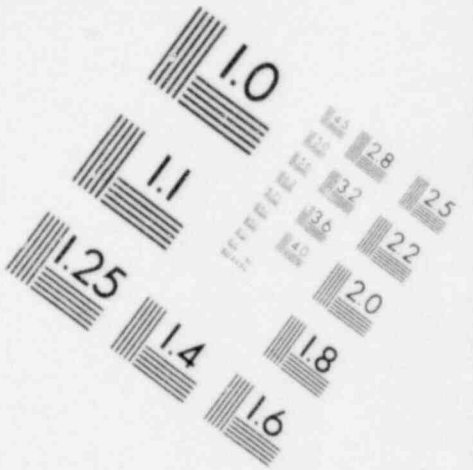
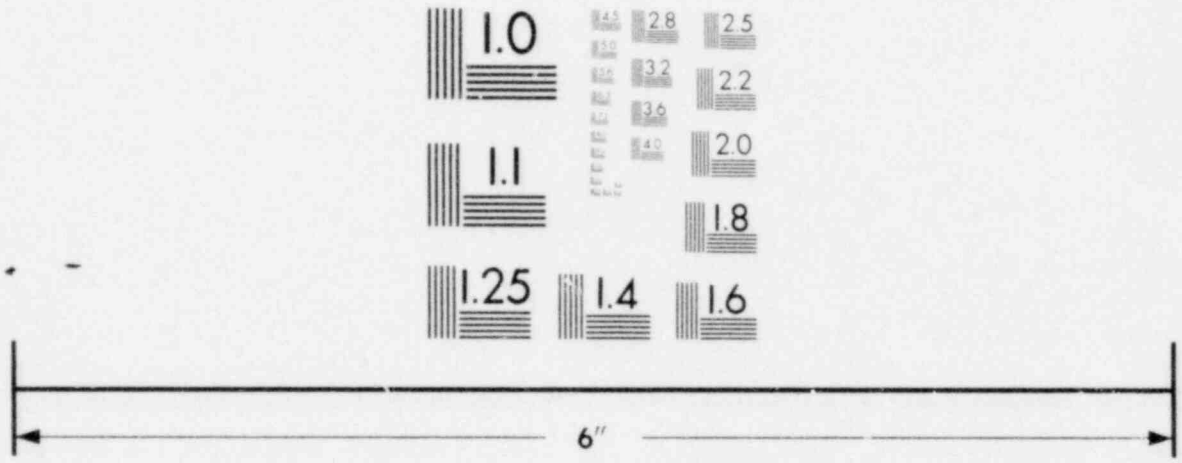
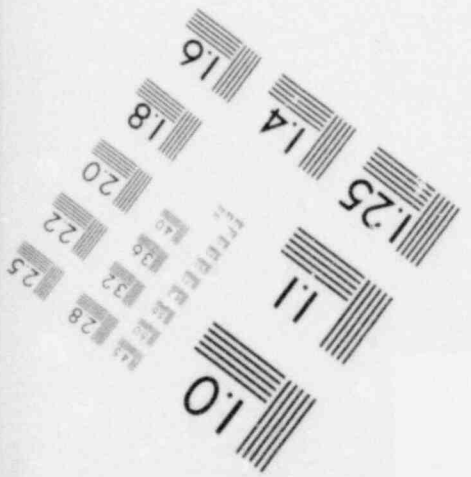
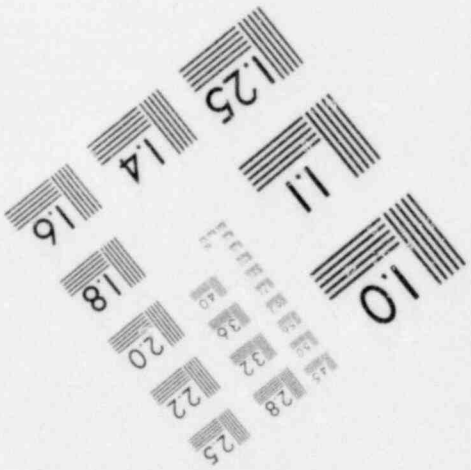


IMAGE EVALUATION TEST TARGET (MT-3)







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associated with that facility available on the other interconnection facility;

(d) HL&P and CSW will solicit requests for reservation capacity from qualified utilities one year before the respective DC interconnection facilities go into commercial operation, and at one year intervals thereafter for reservation capacity which has not been previously committed. HL&P and CSW, respectively, may utilize any unused portion of the reservation capacity until a timely request for wheeling is made by a qualified utility; reservation capacity may be used on a firm basis from year to year or less if, after notice, capacity is not contracted for by qualified utilities; and

(e) The reservation in this paragraph (3) is reduced by the amount of capacity purchased pursuant to paragraph (4)(a), below.

(4)(a) Superseding paragraph 1(f) of the Settlement Agreement (Attachment 1 in the Offer of Settlement filed in Docket No. EL79-8 by CSW et al, dated July 28, 1980) in its entirety, the capacity reserved for qualified utilities pursuant to paragraph (3) of this letter agreement will be available for purchase by qualified utilities at the depreciated original cost thereof, until either (1) the reservation of capacity has been terminated or (2) the opportunity to participate in ownership of additional DC capacity to be installed has been tendered as set forth below, whichever comes first. Purchase of reservation capacity by qualified utilities in the South interconnection shall be on a pro rata basis from both CSW and HL&P unless HL&P and CSW otherwise agree;

(b) Whenever planning is undertaken to increase the capacity of the Interconnections, but at intervals of no more than every three years after June 30, 1983, until June 30, 2004, electric utilities in ERCOT and SWPP will be given the opportunity to participate in the planning of increases in the capacity of the Interconnections and of participating in the ownership of any incremental capacity added,

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provided again that each party that wishes to participate pays its pro rata share of the capital costs of constructing the Interconnection which it wishes to participate in and undertakes to pay its pro rata share of the costs of operating and maintaining that Interconnection and agrees further to be bound by the terms and conditions of the Agreement between Owners of the Interconnections; and

(c) This understanding is without prejudice to the right of either CSW or HL&P to sell DC capacity which is not subject to paragraph (3).

(5) The FERC order will be a final order, not an order contingent upon the issuance of any order by a court or other regulatory agency. However, some mechanism to reopen the FERC proceedings in the event that orders in other forums, including, but not limited to, SEC Admin. Proc. File No. 3-4951, cannot be obtained, is acceptable.

(6) Recognition of any environmental guidelines and periodic reports on the progress of construction and compliance with environmental requirements, not affecting the substance of the Order, will be included.

(7) Subject to reasonable contingencies, such as possible delays under paragraph (6) supra and force majeure, CSW and HL&P will commit to cause the DC capacity to be installed and operational within 5 years of the date of a final FERC order, no longer subject to judicial review. It is understood that HL&P's commitment and CSW's commitment are several, not joint.

(8) The CSW SWPP operating companies shall file the single rate for wheeling within SWPP, as provided in paragraph 1(h) for utilities in SWPP with less than 1500 MW load, within three months of a final FERC order in Docket No. EL79-8, no longer subject to judicial review. It shall go into effect subject to refund, if the Commission so orders. The CSW SWPP single rate filing shall be consistent with subparagraphs 1(a), (c), (d), (g) and (h), and with paragraph (2). The proposed rate to be filed pursuant to this paragraph (8) shall not apply to existing agreements for wheeling or purchase and resale service which either PSO or SWEPCO may have with other utilities.

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If you will confirm this Staff settlement demand by executing a copy of this letter below, the undersigned counsel, each being duly authorized to do so by his respective client, accept your settlement demand.

By our respective signatures, we all represent that this letter, together with the Offer of Settlement previously filed in this docket, constitutes the final settlement between the FERC Staff, CSW, TU, and HL&P.

Counsel for
Houston Lighting & Power Company

Counsel for
Texas Utilities Company and the
Operating Companies thereof

Counsel for
Central & South West Corporation
and the Operating Companies
thereof

Confirmed:

Counsel for the
FERC Staff

Accord:

FERC Staff