

Sept 24, 1980

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter Of:

HOUSTON LIGHTING & POWER COMPANY	:	
(South Texas Project,	:	Docket Nos.
Units 1 and 2)	:	50-498A, 50-499A
	:	
TEXAS UTILITIES GENERATING COMPANY,	:	Docket Nos.
et al. (Comanche Peak Steam	:	50-445A, 50-446A
Electric Station , Units 1 and 2)	:	
	:	

COMMENTS OF THE TEXAS BORDER COOPERATIVES
ON
PROPOSED SETTLEMENTS

Pursuant to the September 15, 1980 directive of the Atomic Safety and Licensing Board that the Texas Border Cooperatives respond to the settlement agreements reached by all parties to the Comanche Peak proceeding, and by all but a limited number of parties to the South Texas Project proceeding, 1/ the Texas Border Cooperatives submit these comments. The comments address the following issues raised by the Board:

1/ The parties not in agreement at the time of the September 15, 1980 status conference were the City of Brownsville, Texas; the South Texas Electric Cooperative, Inc.; and Medina Electric Cooperative, Inc.

1. What impact does the concurrence of the NRC Staff and the Department of Justice with the proposed settlement have on the Texas Border Cooperatives' Petition for Leave to Intervene (T.1005-1007)?

2. In what way are the license conditions proposed by the settlement anticompetitive, or tend to create or maintain an anticompetitive situation (T.1024)?

I. THE TEXAS BORDER COOPERATIVES REMAIN ENTITLED TO STATUS AS INTERVENORS IN THESE PROCEEDINGS NOTWITHSTANDING THE SUPPORT OF A PROPOSED SETTLEMENT OF THE NRC STAFF AND THE DEPARTMENT OF JUSTICE.

Initially, the Texas Border Cooperatives would like to note that the pleadings filed with regard to their Petition for Leave to Intervene, including the responses of the Department of Justice and the NRC Staff, apparently remain unaffected by the settlement proposal. Those parties opposing the Texas Border Cooperatives' intervention continue to oppose it, and neither the NRC Staff nor the Department of Justice has expressed opposition to the granting of intervenor status to the Texas Border Cooperatives. Rather, it is the Board itself that is questioning the continued validity of the Border Cooperatives' intervention request in light of the adoption

by the NRC Staff and the Department of Justice of a settlement. Chairman Miller has noted that the proposed settlement is represented by these government parties as "adequately [protecting] the public interest, [removing] all anticompetitive consequences, and the like." (T.1005) Consequently, he has charged the Border Cooperatives with telling the Board "in what respect the NRC Staff and the Department of Justice have been derelict in their responsibilities insofar as the antitrust laws or anticompetitiveness of the proposed licensing conditions are concerned... ." (T.1007)

The Texas Border Cooperatives do not contend that either the NRC Staff or the Department of Justice have been derelict in their responsibilities insofar as the antitrust laws or anticompetitiveness of the proposed licensing conditions are concerned. However, it is respectfully submitted that "dereliction of responsibility" is an inappropriate standard. Neither the NRC Staff nor the Department of Justice are vested with omniscience and infallibility. Their approval of a tentative settlement is not per se dispositive of the antitrust issues involved.

For example, the Department of Justice has sought in the license conditions to preserve its right to intervene in any interconnection proceedings at the FERC, including FERC Docket No. EL79-8, and to present such arguments and evidence as it deems appropriate. 1/ On September 17, 1980 the Department of Justice did, in fact, file for leave to intervene in FERC Docket No. EL79-8, and argued to the FERC that:

The construction of the two direct current asynchronous electrical interconnections between ERCOT and SWPP, as advocated by CP&L, PSO, SWEPCO, and WTU in their Amendment Application of June 27, 1980, instead of the construction of alternating current synchronous interconnections between ERCOT utilities and SWPP utilities, as advocated in the CP&L Application of February 9, 1979, could have effects on utilities both in ERCOT and SWPP and throughout the southwestern United States that would be anticompetitive, inconsistent with the public interest and contrary to the Public Utility Regulatory Policies Act of 1978 ("PURPA"). 2/ [emphasis added.]

The Texas Border Cooperatives are concerned that approval by the NRC of license conditions which contain extensive references to direct current interconnections, will serve to preclude or limit consideration of the competitive implications of the d.c. ties by the FERC.

- 1/ Comanche Peak Proposed License Condition D(2)(o); South Texas Project License Condition I.B.(10).
2/ "Petition of the United States Department of Justice for Leave to Intervene," filed September 17, 1980 in Central Power & Light Company, et al., FERC Docket No. EL79-8. A copy is attached at Appendix A.

The point to be made is that the Texas Border Cooperatives are not alone in their concern over the implications of the d.c. tie. The Justice Department believes that these concerns can be adequately addressed before the FERC, while the Texas Border Cooperatives retain reservations over the precedential implications of licensing conditions which embody the concept of d.c. interconnections, and are accepted in settlement of an antitrust review. The Texas Border Cooperatives' disagreement with the Department of Justice on this issue is not premised upon the belief that they are "derelict" in their responsibilities, but merely that we disagree as to the implications of the proposed settlement.

Accordingly, the Texas Border Cooperatives believe that the validity of their intervention remains unaffected by the agreement to a settlement by either the NRC Staff or the Department of Justice, and urge that the Board grant the petition for leave to intervene.

II. THE PROPOSED LICENSE CONDITIONS COULD MAINTAIN OR CREATE CONDITIONS INCONSISTENT WITH THE ANTITRUST LAWS.

Both the proposed South Texas Project License Conditions and the Comanche Peak License Conditions embody the concept of interconnecting the Southwest Power Pool with the Energy

Reliability Council of Texas through the construction of direct current asynchronous interties. ^{1/} The competitive implications of such a mode of interconnection were addressed in the Texas Border Cooperatives' petition for leave to intervene in these proceedings, the replies filed by the Department of Justice and the Staff of the Nuclear Regulatory Commission, and the Texas Border Cooperatives' response to the replies filed by the parties. Essentially, the Texas Border Cooperatives view the establishment of d.c. ties as creating a condition which would maintain the transmission dominance of the large utilities in Texas, to the detriment of the Texas Border Cooperatives, including for example the maintenance of continued asynchronous operation of ERCOT thus precluding the construction of a.c. interconnections by small systems. For small systems, it is the opinion of the Texas Border Cooperatives' consultant that d.c. interconnections are economically prohibitive.

The capacity reservation provisions of the settlement with regard to the d.c. tie are limited both in terms of the amount of capacity reserved, and the length of time for which it will be reserved (15% of the capacity of the lines for 5 years). The Texas Border Cooperatives do not view

^{1/} Comanche Peak License Conditions D(2)(e), (i), and (o); South Texas Project License Conditions IB(3), (9), and (10).

these provisions as adequately off-setting the detrimental aspects of d.c. as opposed to a.c. interconnections.

Additionally, the proposed license conditions would sanction the disconnection of service to entities seeking to effect an interstate interconnection which might affect the jurisdictional status of other utilities located in Texas, unless the entities desiring to interconnect in interstate commerce first sought to obtain an order from the FERC requiring such an interconnection. Basically, the license conditions perpetuate a situation in which the right of an entity to engage in interstate transactions is restricted: if it does not first obtain an FERC order under the Public Utilities Regulatory Policy Act of 1978, it runs the risk of suffering disconnection from existing power suppliers. 1/

The Texas Border Cooperatives recognize that the proposed settlement represents a compromise by a number of the parties to these proceedings. The concern that they have expressed about the d.c. interties stems from the fact that they believe they will constitute barriers that will impair their ability to develop as generating utilities, that such a result is inconsistent with the antitrust laws, and no record has been established in these proceedings that would serve to alleviate these concerns.

1/ Comanche Peak License Conditions D92) (1)9a), (1) (b), and (1) (c). South Texas Project License Conditions (I.B. (6) (a), d (6) (b), and (6) (c).

Subsequent to the filing of their petition for leave to intervene in these consolidated proceedings, the Texas Border Cooperatives engaged in discussions with Central and Southwest Corporation concerning enhanced opportunities for participation in generating units planned by that company. These discussions have been fruitful and there exists the possibility that the Texas Border Cooperatives' concerns over the implications of the d.c. interconnection would be sufficiently alleviated that their existing opposition to the use of d.c. ties would be withdrawn. The Texas Border Cooperatives expect to finalize their tentative understandings with C&SW prior to Wednesday, October 1, 1980 and will advise the Board in writing on that date of whether they desire to withdraw their petition for leave to intervene.

Respectfully submitted,



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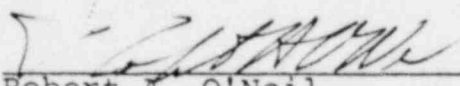
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