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COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 1
OPERATING LICENSE ANTITRUST REVIEW
FINDING OF NO SIGNIFICANT CHANGE

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the "significant change" determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Comanche Peak Steam Electric Station construction permits to TU Electric Co., et al. and the consummation of the settlement agreement before the Commission, the staffs of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the General Counsel, hereafter referred to as "staff", have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in northeastern and north central Texas, the events relevant to the Comanche Peak construction permit review and the antitrust settlement subsequent to the construction permit review.

The conclusion of the staff analysis is as follows:

> Prior to the antitrust settlement agreement before the Nuclear Regulatory Commission (NRC), competition for the purchase or sale of power and energy and related ancillary services in the Texas bulk power market was primarily limited to intrastate power transactions. This intrastate power network has remained intact for many years--notwithstanding the fact that some power entities doing business on the perimeter of the state of Texas as well as some systems within the state have expressed interest in interstate bulk power transactions for a number of years. Although the Texas bulk power market has remained primarily intrastate in nature, there have been several changes since the NRC settlement in 1980 that have provided competitive stimuli to this market.
>
> The change that has had the greatest impact in the Texas bulk power market has been the implementation of the joint settlement agreement, i.e., before the NRC and the Federal Energy Regulatory Commission. This settlement agreement required TU Electric, et al., to make their transmission facilities more available to power systems in Texas and thereby promote competition between intrastate and interstate power systems with the construction of two DC transmission lines. Although both of the direct current (DC) transmission ties with the Southwest Power Pool (SWPP) have not been completed, the North tie has been completed and the Central and South West operating systems are exchanging power and energy over this tie. Plans have been developed to expand the North tie (as contemplated in the settlement agreement) to accommodate a significant power transfer by a Texas co-generating entity.

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Capacity (15 percent) in both DC interties has been reserved for non-owners who wish to engage in firm power transactions in the interstate market. Moreover, wheeling to, from or over the DC interties is now an available option to many power systems in Texas.

To remedy a growing need to redistribute power from co-generators concentrated in industrialized pockets in the state, the Texas Public Utility Commission promulgated rules requiring mandatory transmission or wheeling of co-generated power in Texas. These rules have enabled corporate entities, which heretofore have not participated in the Texas bulk power market, to market their by-product power and energy, i.e., barriers to entry into the production and sale of bulk power in Texas have been lowered as a result of the newly adopted wheeling rules.

Increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the state of Texas. TU Electric has implemented numerous transmission and scheduling agreements which have enabled a variety of power systems to shop for alternative power throughout the northern portion of the state.* Moreover, a computer controlled bulletin board, advising all members of the Electric Reliability Council of Texas (ERCOT) of available power and energy in the state is now in place, making "shopping" for power and energy easier for more power systems in the state--thereby enabling power systems to better meet the individual needs of their customers.

All types of power entities in Texas, i.e., municipal, cooperative and investor owned, are beginning to explore joint generation projects both within and outside the state. The concept of interstate planning and participation in interstate power projects is a new one for most Texas power entities. Although the movement to interstate cooperation and competition is still in its embryonic stages in Texas, this movement was contemplated by and provided for in the antitrust settlement agreement before both the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission. (The settlement agreement provides for requests for capacity increases and ownership purchases in the DC interties at intervals of every 3 years beginning in June of 1986 and lasting until June of 2004.) It is anticipated that this movement toward increased cooperation and competition will continue among intrastate power systems within Texas and also between intrastate power systems wishing to engage in joint power supply planning and power supply transactions across state borders.

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*Although there have been allegations made recently by an electric cooperative power system in TU Electric's service area that TU Electric has not provided transmission and coordination services upon request, staff believes, in light of the Commission's Summer decision, that the issues raised by the cooperative are not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding.

Although there are still physical impediments to complete synchronous operations between most Texas power entities and systems outside of Texas, i.e., there are no major alternating current interconnections between ERCOT and the SWPP, the settlement agreement provided power systems inside of Texas, as well as in surrounding states, the opportunity to exchange power and energy and engage in bulk power transactions. The staff views the settlement agreement as a major first step in opening up power supply options to a broad spectrum of power entities in ERCOT and the SWPP. The staff's analysis of the changes in the licensees' activities since the antitrust settlement has not identified any changed activity envisioned by the Commission as set forth in its Summer decision. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Comanche Peak Steam Electric Station.

Based upon the staff analysis, it is my finding that there have been no "significant changes" in the licensees' activities or proposed activities since the completion of the previous antitrust review.

Thomas E. Murley, Director
Office of Nuclear Reactor Regulation

COMANCHE PEAK STEAM ELECTRIC STATION, UNIT 1

TEXAS UTILITIES ELECTRIC COMPANY, ET AL

DOCKET NO. 50-445A

FINDING OF NO SIGNIFICANT ANTITRUST CHANGES

CONTENTS

I. Introduction

A prospective operating licensee is not required to undergo a formal antitrust review unless the Nuclear Regulatory Commission (NRC or Commission)* determines that there have been "significant changes" in the licensee's activities or proposed activities subsequent to the review by the Attorney General and the Commission at the construction permit (CP) stage. Concentration on changes in the applicant's activities since the previous antitrust review expedites and focuses the review on areas of possible competitive conflict heretofore not analyzed by the Attorney General or the Commission.

In its Summer decision,** the Commission has provided the staff*** with a set of criteria to be used in making the significant change determination for operating license (OL) applicants:

> "The statute contemplates that the change or changes (1) have occurred since the previous antitrust review of the licensee(s); (2) are reasonably attributable to the licensee(s); and (3) have antitrust implications that would most likely warrant some Commission remedy."****

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* The Commission has delegated the responsibility for making a significant change determination to the Director of the Office of Nuclear Reactor Regulation.

** Virgil C. Summer Nuclear Station Unit 1, Docket No. 50-395A, June 26, 1981 at 13 NRC 862 (1981).

*** "Staff" hereinafter refers to the Policy Development and Technical Support Branch of the Office of Nuclear Reactor Regulation and the Office of the General Counsel.

**** Commission Memorandum and Order, p. 7, dated June 30, 1980 (CLI-80-28).

To warrant a significant change finding, i.e., to trigger a formal OL antitrust review, the particular change(s) must meet all three of these criteria.

Due to the substantial lapse of time since the antitrust settlement in the Comanche Peak proceeding was first proposed in September of 1980 and the scheduled fuel load date for Comanche Peak (summer/fall of 1989), staff has undertaken a review of the Comanche Peak licensees' activities since the settlement agreement. As a result of its review, staff has determined that none of the changes that were identified satisfied all three of the criteria set forth in Summer and for this reason, staff is not recommending that a formal antitrust review be conducted at the operating stage.

II. Background

On December 12, 1974, the Commission issued a construction permit for Comanche Peak Steam Electric Station, Units 1 and 2. On January 14, 1976, the Commission issued a construction permit for South Texas Project, Units 1 and 2 (hereinafter "South Texas"). In both cases the Attorney General advised the Commission that there was no need for an antitrust hearing. Thereafter, on June 4, 1976, Central Power and Light Company, one of the applicants in South Texas, filed a request for hearing on antitrust issues in that matter. On June 15, 1977, the Commission

found "changed circumstances" in South Texas and requested further antitrust advice from the Attorney General. On February 21, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in South Texas. On June 26, 1978, the Commission again found "changed circumstances" in Comanche Peak and requested further antitrust advice from the Attorney General. On August 1, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in Comanche Peak 1 and 2. In both cases, the Commission ordered antitrust proceedings to be commenced. Numerous cities, utilities, and electric cooperatives intervened in these two proceedings. The Department of Justice (hereinafter "Justice") and the Nuclear Regulatory Commission staff participated in both proceedings. The two proceedings were consolidated for discovery in 1978 and for hearing in 1980. Discovery took place in 1979 and 1980. On September 14, 1980, all of the applicants in both proceedings, Justice and the staff, submitted two sets of proposed license conditions representing a settlement of these matters acceptable to the applicants, Justice and staff. The only intervenor which opposed the settlement and proposed license conditions was the Public Utilities Board of the City of Brownsville, Texas (hereinafter "Brownsville"). Thereafter, on December 24, 1980, Conformed Settlement License Conditions were filed.

A Conference of counsel was held on April 13, 1982. Again, all parties to both of these matters, except Brownsville, reiterated their support for the settlement or, in any event, their lack of opposition to it. Brownsville was directed to respond to four specific questions concerning

its opposition to the settlement. On April 22, 1982, Brownsville responded that it no longer opposed the proposed settlement and did not want the settlement to be rejected. Thus, there is no opposition to the proposed settlement and Conformed License Conditions.*

The settlement agreements for both South Texas and Comanche Peak with accompanying antitrust license conditions were approved by the administrative law judge on May 6, 1982. The license conditions were made immediately effective and ordered attached to the respective operating licenses when issued by the Commission. Staff's significant change review is concentrated on changes in the licensees' activities since the combined Comanche Peak-South Texas settlement agreement was proposed in September of 1980.

III. The Texas Electric Power Industry

The Electric Reliability Council of Texas (ERCOT) was formally organized in 1970. ERCOT membership is voluntary and is composed of generation,

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* This procedural history was excerpted from a "Memorandum and Order Approving Settlement Agreements and Proposed License Conditions and Dismissing Proceeding", issued by Administrative Law Judge James A. Laurenson on May 6, 1982.

transmission and distribution utilities throughout the state of Texas. Of the nine regional reliability councils,* ERCOT is unique in that its members are not interconnected (by synchronous alternating current ties) with power systems outside of the state of Texas. By virtue of their intrastate mode of operation, ERCOT members remain outside of the jurisdiction of the Federal Energy Regulatory Commission (FERC) which regulates the interstate wholesale power transactions of utility systems in the remaining eight reliability councils.

The relevant marketing area for power and energy generated by Comanche Peak** focuses primarily on the northeastern and northcentral portions of the state of Texas--from the Texas-Louisiana border in the east to the City of Midland, Texas in the western portion of the state. This is the area in which the licensees primarily serve and the area where the use of the power and energy generated by Comanche Peak will be most concentrated.

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* The National Electric Reliability Council (NERC) was formed by the electric utility industry in 1968. The organization was formed primarily to augment the reliability and adequacy of bulk power supply of electric utility systems in North America.

** Unless otherwise noted, all references to the Comanche Peak Project hereinafter refer solely to Unit 1 of the Plant.

A. Applicant Power Systems

Comanche Peak is an 1,150 MW unit located near Glen Rose, Texas, approximately 45 miles southwest of Ft. Worth, Texas. The plant is jointly owned by one investor owned utility, one municipal joint action agency and two cooperative power systems.*

The largest applicant is TU Electric (approximatly 88% ownership) with 1987 generating capability of approximately 18,500MW. TU Electric is a holding company comprised of three operating electric divisions, Dallas Power & Light Co., Texas Electric Service Co. and Texas Power & Light Co.** Through its operating divisions TU Electric provides electric power and energy to a broad spectrum of power systems in the northeastern and northcentral portions of Texas serving a populaton area of over 5 million persons (approximately one-third of the population of the state of Texas). TU Electric supplies total and partial requirements power to various systems in its marketing area from large urban loads in the Dallas-Ft. Worth area to smaller municipal and cooperative systems in rural and west Texas.

The three minority co-owners, totaling slightly over 12 percent ownership in the plant, are significantly smaller power systems that serve more rural, less populated areas of eastern and northeastern Texas. The Texas Municipal Power

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* TMPA, Brazos and TU Electric have reached tentative agreements whereby TU Electric has agreed to repurchase TMPA's and Brazos' share of Comanche Peak. See "Changes", infra.

** TU Electric's non-electric subsidiaries include: Texas Utilities Services, Inc., Texas Utilities Fuel Co., Texas Utilities Mining Co., Chaco Energy Co. and Basic Resources, Inc.

Agency or TMPA (6.2%) is a joint action agency comprised of four Texas municipal electric systems -- the Cities of Byran, Greenville, Denton and Garland. TMPA members have approximately 1,100MW of generating capability and serve customers primarily within the confines of the four member systems' service areas. Brazos Electric Power Cooperative, Inc. or Brazos (3.8%) is a generation and transmission cooperative headquartered in Waco, Texas. Brazos has generating capability of approximately 900MW and serves twenty-eight member systems at wholesale. Tex-La Electric Cooperative of Texas (2.167%) serves seven wholesale distribution cooperatives primarily in the eastern part of Texas, near the Louisiana border. Tex-La presently has no generating capability and acts as a marketer of power and energy for its member systems.

IV. Previous Antitrust Reviews

A. Comanche Peak CP Review

Texas Utilities Generating Co. (now TU Electric Co.), acting as agent for Dallas Power and Light Co., Texas Electric Service Co. and Texas Power and Light Co., submitted its application to construct both units of the Comanche Peak nuclear plant in the spring of 1973. During the ensuing review by staff of both the Department of Justice and the Atomic Energy Commission, various allegations were uncovered pursuant to TU Electric's misuse of market power in its service area. Generally, TU Electric was accused of using its dominant market position in generation and transmission facilities to restrain the competitive alternatives of smaller power systems in Texas.

As a result of these allegations, additional information was requested from TU Electric and an in-depth analysis of TU Electric's competitive activities was conducted. After extensive review and negotiations among staff, TU Electric and affected parties in Texas, a set of policy commitments was agreed upon that obligated TU Electric to address many of the competitive concerns raised during the review process. The commitments required TU Electric to offer, 1) access to its Comanche Peak nuclear plant, 2) transmission services required to take the power from Comanche Peak, 3) to facilitate transmission of bulk power over its facilities for other power systems in its service area, 4) reserve sharing, emergency and maintenance power, 5) interconnections, 6) membership in regional pooling bodies, and 7) to accommodate smaller power systems in the area when planning and construction of new generation and transmission facilities are needed for area wide system reliability. Based upon these policy commitments, the Department of Justice concluded in its advice letter to the Atomic Energy Commission, dated January 17, 1974, that these commitments will,

> "... provide competitors of Applicant with competitive, alternative bulk power supply sources and substantially eliminate the grounds on which complaints were made to the Department by the smaller systems were based. On the strength of these policy commitments, and with the expectation that the Commission will include them as conditions to the license, we conclude that an antitrust hearing will not be necessary with respect to the instant application."*

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*Department of Justice advice letter dated January 17, 1974, pp. 3-4.

These commitments were attached to the Comanche Peak construction permits as license conditions and as a result, no CP antitrust hearing was held.

B. Comanche Peak - South Texas OL Review

At the operating license stage of review, the Commission is primarily concerned with changes in the licensee's activities that have occurred since the CP antitrust review. In May of 1976, after completion of the Comanche Peak CP review, a series of events occurred that involved TU Electric and other investor owned power systems in Texas.

In an attempt to electrically unify its holding company system, one of the operating subsidiaries of the Central and Southwest Corporation, Central Power and Light Co. (CPL), activated an interconnection between one of its intrastate and interstate operating subsidiaries. As a result, TU Electric and Houston Lighting & Power Co. (HL&P) broke off interconnections with CPL and effectively dichotomized the Texas electric bulk power market into intra and interstate modes of operation. In so doing, many of the competitive power supply options available to smaller power systems in Texas were severely curtailed or eliminated altogether.

These changes in the Texas bulk power market were noted by the Commission in its operating license review of the South Texas Project during the late 1970's. Sensing that the competitive process in the Texas bulk power market had been compromised by the chain of events following CPL's attempt to unify

its power system, the Commission made a "significant change" determination (as required under Sec. 105c) and formally requested the advice of the Department of Justice pursuant to the need for an antitrust hearing involving Houston Lighting & Power's South Texas operating license application.

In its review of the situation described by the Commission, the Department highlighted anticompetitive conduct by both Houston Lighting & Power and TU Electric that threatened the competitive status quo in Texas and jeopardized the possibility of the enhanced competition originally envisioned by the license conditions attached to the Comanche Peak construction permit in 1974.

> "At the time of the Department's letter of January 25, 1977, HL&P and TU, the two dominant utilities in Texas, were refusing to interconnect with other utilities (utilities with which they had historically maintained interconnections); that refusal was having a direct and substantial adverse effect on those utilities' power supply costs, reliability and their ability to remain competitive."*

In April of 1978, TU Electric filed its application with the Nuclear Regulatory Commission for an operating license for its two unit Comanche Peak nuclear plant. In light of the similarities between the South Texas

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* Department of Justice South Texas advice letter dated February 21, 1978, at p. 11.

and Comanche Peak applications, the Commission decided to make the "significant change" finding and seek the advice of the Department of Justice as to whether or not an antitrust hearing should be held in Comanche Peak, i.e., the same procedure followed in South Texas. By its order dated June 21, 1978, the Commission formally sought the advice of the Department.*

The Department rendered its advice to the Commission on August 1, 1978, indicating that the same changed circumstances cited in its February 21, 1978, advice letter pursuant to the South Texas nuclear plant also applied to the instant Comanche Peak application. The Department concluded that,

> "...because of applicant's and HL&P's adherence to a policy of intrastate only operations in light of the present market situation, and considering the unprecedented disruptive action of disconnection undertaken by applicant and HL&P to enforce this policy and agreement, an antitrust hearing is necessary to determine whether additional conditions should be attached to the operating license of the Comanche Peak units in order to eliminate a situation inconsistent with the antitrust laws."**

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* The Department's advice was formally sought via letter dated June 26, 1978 from James Murray, acting for the Executive Legal Director, to Griffin B. Bell, Attorney General.

** Department of Justice advice letter dated August 1, 1978, pp. 3-4.

Subsequent to publication of the Department's advice letter in the Federal Register in August of 1978, the Commission received several petitions to intervene from electric power cooperatives, municipalities and utility companies. Interrogatories were exchanged among the parties and the discovery process was initiated. Due to the similarities in issues and the parties involved, the operating license review of the Comanche Peak plant was consolidated with the on-going parallel review in South Texas.

On September 14, 1980, all of the parties, with the exception of the City of Brownsville, in the consolidated South Texas/Comanche Peak proceeding reached agreement on two sets of proposed license conditions. Subsequently, the City of Brownsville dropped its request to purchase a portion of the South Texas Project and on April 22, 1982 the City of Brownsville dropped its opposition to the proposed settlement and accompanying license conditions. On May 6, 1982, the Administrative Law judge assigned to rule on the settlement accepted the settlement, ordered license conditions attached to the Comanche Peak and South Texas operating licenses and made the license conditions immediately effective.

V. Antitrust Settlements

A. NRC Settlement

In an effort to resolve the licensing proceedings before the NRC as well as a companion proceeding on-going before the Federal Energy Regulatory Commission (FERC), see "FERC Settlement", the applicants in the consolidated South Texas/ Comanche Peak proceeding arrived at a settlement agreement and a set of license

conditions* designed to open up competitive options to power entities in Texas and improve the competitive process in bulk power supply throughout the state of Texas. At the forefront of the settlement was the construction of two direct current (DC) transmission interties that would link ERCOT with the Southwest Power Pool and allow the parent holding company of CPL, the Central and South West Corporation (CSW),** to fully integrate its system and operate in a more efficient manner. The two DC ties would be constructed by CPL's parent, CSW, one in the northern portion of the state of Texas linking Texas and Oklahoma and one in the southern part of the state linking Texas and Louisiana.

The license conditions attached to the Comanche Peak operating license (as well as the Comanche Peak 2 construction permit) were intended to provide a competitive stimulus in the Texas bulk power market by requiring the licensee, TU Electric, to provide participation access in Comanche Peak as well as access to the coordination services and transmission facilities necessary for any new owner to effectively use Comanche Peak power and energy. Membership in the planning organization, TIS, was opened up to qualified entities and both TU Electric and HL&P were required to wheel power over their transmission

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* A copy of the Comanche Peak license conditions is attached as Appendix A.
** Central and South West Corporation is a holding company controlling the following subsidiary companies: Central Power & Light Co., Southwestern Electric Power Co., West Texas Utilities Co., and Public Service Company of Oklahoma.

facilities to other interconnected entities. The license conditions did not preclude either TU Electric or HL&P from disconnecting from interstate power systems; however, the conditions did prohibit TU Electric or HL&P from making such a decision in concert with any other entity. The NRC settlement and accompanying license conditions were linked to the settlement of parallel issues, involving many of the same parties, before the FERC -- specifically, the approval of the construction of the DC interties linking ERCOT and the Southwest Power Pool (SWPP).

B. FERC Settlement

The settlement agreement linking all four CSW operating systems via DC interties was designed to resolve outstanding proceedings before the NRC, the FERC and the Securities and Exchange Commission. An "Order Requiring Interconnection and Wheeling, and Approving Settlement,"* was issued by the FERC on October 28, 1981. The order approved the construction of two DC ties as well as various provisions under which the interties would be used. Other utilities in ERCOT and SWPP were given the opportunity to share in the ownership of the DC ties depending upon the extent to which they shared in the capital construction costs and the operating and maintenance costs of the DC ties. Moreover, at intervals of every three years (beginning in June of 1986)

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* Attached as Appendix B.

other utilities which are members of ERCOT or SWPP will be given the opportunity to participate in the planning and ownership of any capacity increases in the interities.* CSW, HL&P and TU Electric agreed to file rates with the FERC for transmission to, from and over the DC interties and CSW and HL&P were required to reserve 15 percent of their respective capacities in the DC lines for firm power wheeling for smaller entities in ERCOT and the SWPP (i.e., entities with loads of less than 500MW). CSW was directed to consult with (upon request) any entity which owns or operates generation or transmission facilities interested in the technical feasibility of any specific AC interconnection between ERCOT and SWPP. The FERC ruled that the proposed settlement was "fair, reasonable and in the public interest" and approved the agreement on October 28, 1981.

On May 1, 1986, the CSW operating companies, et al., filed a petition before the FERC requesting relief and modification of the original settlement approved by the FERC in 1981. The original order required the CSW operating companies and HL&P to construct two DC ties, the North interconnection near Lawton, Oklahoma and the South interconnection in Walker County, Texas, linking ERCOT with the SWPP. The North interconnection was placed in service on December 14, 1984. Construction of the South interconnection has been

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* This opportunity to participate, at three year intervals, will expire on June 30, 2004 pursuant to the settlement agreement.

continuously delayed by litigation involving certification of rights of way. Because of these delays, the CSW operating companies, HL&P, TU Electric, and the Southwestern Electric Power Co. (SWEPCO), petitioned the FERC requesting that FERC modify its earlier order approving the settlement in question so as to,

> "...(a) require construction of direct current terminals and such associated alternating current transmission facilities as are necessary to effect an asynonchronous direct current interconnection between SWEPCO's Welsh generating station and TU Electric's Monticello generating station (herein below defined as the "East Interconnection"); (b) require the CSW Operating Companies, HL&P and TU Electric to interconnect with each other at the East Interconnection; (c) require such ownership of the East Interconnection by the CSW Operating Companies, HL&P and others, and such wheeling, coordination, commingling, sale and exchange of electric power to, from and over the East Interconnection or within the State of Texas as may facilitate its use; and (d) relieve the CSW Operating Companies and HL&P from their obligation to construct and operate the South Interconnection upon construction of the East Interconnection."*

Petitioners' request and the Order approving same, substituted the East Interconnection for the previously approved South Interconnection. The modified settlement agreement provided for an additional 100MW of capacity in the East Interconnection (from 500MW to 600MW) to be owned by TU Electric. The FERC approved the modified settlement agreement by order dated July 23, 1987. The provisions of the FERC's original orders, except as they pertain to the South Interconnection and East Interconnection, remain unchanged.

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* FERC "Order Approving Settlement," pp. 2-3, issued July 23, 1987 is attached as Appendix C.

C. Securities and Exchange Commission Proceeding

On February 16, 1945, the Securities and Exchange Commission (SEC) issued a decision establishing the Central and South West Corporation as an integrated electric public utility system as defined by the Public Utility Holding Company Act of 1935. On March 26, 1974, six wholesale power customers* of the Public Service Company of Oklahoma (PSO), an operating subsidiary of the CSW system, complained to the SEC that CSW had ceased to operate as an integrated electric utility system and requested that the 1945 order be modified or revoked.

In an attempt to address the complaints raised by its wholesale power customers, CSW presented an integration plan before the SEC designed to re-establish interconnections between its ERCOT and SWPP subsidiary companies. As a means of testing this plan, CSW wired a portion of its West Texas Utilities subsidiary, then in interstate commerce, with its intrastate (ERCOT) subsidiary, Central Power and Light Company in May of 1976, thereby placing the entire CSW holding company in interstate commerce. The intrastate power systems interconnected to Central Power and Light, notably HL&P and Texas Utilities Co., reacted to CSW's actions by disconnecting their systems from CPL in an effort to remain intrastate only power systems.

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* The complaining parties were comprised of the Oklahoma Cities of Altus, Frederick, Cordell and Mannford as well as the Verdigris Valley Electric Cooperative and the Indian Electric Cooperative, Inc. The wholesale customers argued that CSW's non-integrated mode of operation was not as efficient as a fully integrated electric system, thereby resulting in higher costs and rates to CSW's wholesale power customers.

As indicated earlier, these series of actions and reactions by power systems in the southwest resulted not only in a proceeding before the SEC* pursuant to CSW's standing as a public utility holding company, but also precipitated proceedings before the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission. Because of the settlement reached before the FERC and the NRC and the commonality of parties and issues in all three proceedings, Central and South West Corp. on February 8, 1982 moved (with the consent of HL&P and TU Electric) to dismiss the proceeding before the SEC. The SEC agreed that the settlement agreement remedied the outstanding issues before the SEC.

> "The record before the FERC, as supplemented in this proceeding, indicates that substantial savings are expected to be achieved in revenue requirements to ratepayers of the CSW subsidiaries from operation of the CSW system in an interconnected mode as a result of the planned interconnection between ERCOT and SWPP. The order issued by FERC finds, among other things, that the construction of the planned interconnection facilities 'is in the public interest, will encourage overall conservation of energy and capital, will optimize the use of facilities and resources and will improve the reliability of each electric utility system to which the order applies.'"**

The SEC ruled that the proposed DC interconnections would enable CSW to operate as a fully integrated electric system and terminated the instant proceeding. In doing so, the SEC let stand its 1945 decision that the Central and South West Corporation was an integrated electric public utility system, as defined by the Public Utility Holding Company Act of 1935.

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* Administrative Proceeding: File No. 3-4951

** "Memorandum Opinion and Order Terminating Proceeding," issued by the Securities and Exchange Commission on April 1, 1982, p.4. (Copy attached as Appendix D.)

VI. Changes Since The Antitrust Settlement

Section 105c(2) of the Atomic Energy Act, as amended, requires a second antitrust review at the operating license stage if "significant changes" in the licensee's activities have taken place since the completion of the construction permit review. The chain of events surrounding the actions of CP&L and West Texas Utilities' (WTU), placing Texas in interstate commerce, triggered an operating license review by the Commission.*

The Commission made the determination that the circumstances surrounding WTU's actions and the reactions by HL&P and TU Electric represented a "significant change" under Section 105c(2) and on June 26, 1978 requested the Department of Justice's advice as to whether or not a hearing should be held. By letter

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* It is significant to note that the Commission in its South Texas Memorandum and Order dated June 15, 1977 (5 NRC 1303), determined that future "significant change" determinations should be made by staff.

> "The making of a significant change determination triggering a referral to the Attorney General for his advice on its antitrust implications is a function which could and perhaps should be delegated to the regulatory staff." (5 NRC 1318)

The Commission implemented this procedural change in a memorandum dated September 12, 1979 to Harold Denton, Director of the Office of Nuclear Reactor Regulation and William J. Dircks, Director of the Office of Nuclear Material Safety and Safeguards. (The Director of NRR was delegated the authority to make the "significant change" determination for power reactors and the Director of NMSS was delegated the same authority for production or non-reactor facilities.)

dated August 1, 1978, the Department recommended that a hearing be held in the Comanche Peak proceeding. On September 11, 1980 the parties reached a settlement of the NRC proceeding (the settlement was not formalized until May 6, 1982). The NRC settlement represented the basis for settlement of outstanding proceedings involving parallel issues before both the Federal Energy Regulatory Commission and the Securities and Exchange Commission.

Eight years have passed since the settlement was initially reached and construction of the Comanche Peak facility has not yet been completed. This period of time represents a significant void in the Commission's antitrust review and for this reason staff requested the Comanche Peak licensees to supply data pursuant to Regulatory Guide 9.3, i.e., information pursuant to changed activity since the previous antitrust review -- in this case, since the settlement agreement in 1980, not the completion of the construction permit review in 1974.

From the licensees' responses to Regulatory Guide 9.3 and information gathered from public print sources as well as contacts with other governmental agencies, staff has identified several changes associated with TU Electric's conduct and activity since the settlement was reached in late 1980.

A. Transmission

The Texas electric bulk power market has undergone substantial change since the antitrust settlement was reached in 1980 -- not the least of which has been the increased willingness to transmit or wheel intrastate power by the

major power systems in Texas. The impetus provided by the Texas Public Utility Commission (TPUC) and the construction of the DC transmission line(s) required by the settlement have both sparked this increase in competitive consciousness in Texas.

The TPUC adopted rules pertaining to mandatory transmission (wheeling) of co-generated power in the state. Since the Public Utility Regulatory Policies Act (PURPA) was enacted in 1978, the amount of co-generators and by-product electric power and energy has increased significantly in the state of Texas -- particularly in the southern portion of the state near the heavily industrialized City of Houston. Industry sources estimate that the newly adopted wheeling rules could lead to the development of as much as 1,000MW of co-generation in the state in the near future.*

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* Electric Utility Week, October 14, 1985. p. 9.

Representative of this new energy source is an agreement signed in 1985 between TU Electric and a subsidiary of the Northern Natural Resources Co. TU Electric contracted to purchase 393MW of firm capacity from a chemical project to be built by a Northern Natural subsidiary, InterNorth, Inc.** The power will be wheeled through the HL&P service area. The TPUC rule pursuant to wheeling of co-generated power was termed a "major factor" in InterNorth's decision to build the facility. Moreover, TU Electric has entered several wheeling and transmission scheduling agreements that have facilitated power flows for a number of power systems in Texas. These agreements are listed in Appendix E.

B. Interconnections

TU Electric has been actively engaged in the consummation of new interconnection agreements since the 1980 settlement agreement -- much of this activity has been precipitated by newly agreed upon transmission agreements, i.e., power flows over transmission facilities are usually monitored and controlled by attendant interconnection agreements. These agreements are varied in scope and are listed in Appendix F.

** Wall Street Journal, February 26, 1986, p. 16; Electric Utility Week, July 8, 1985, pp. 9-10.

In conformance with the settlement agreement reached by the parties in all three proceedings (NRC, FERC and SEC), construction of two direct current transmission lines linking Texas with the SWPP was initiated. The North DC intertie was constructed by the Central and South West Corp. (100% owned by CSW) and energized in December of 1984. The tie is presently being used to link West Texas Utilities Co. with the Public Service Company of Oklahoma. The initial settlement agreement reached in 1980 included the construction of a south DC transmission line connecting the service areas of HL&P and SWEPCO. Due to environmental siting problems, a new route for the second DC line was agreed upon by the concerned parties. The new "East" tie, located in TU Electric's service area, links SWEPCO to ERCOT farther north than the proposed South DC tie. It is anticipated that ownership of the newly proposed East tie will include the following power systems: Houston Lighting and Power Co., 200MW; Central Power and Light Co., 150MW; Southwestern Electric Power Co., 150MW and TU Electric Co., 100MW.*

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* The new route, termed the "East" intertie, would link the Texas Utilities Co. (at its Monticello plant) with Southwestern Electric Power Co. (at its Welsh plant). The East intertie would be approximately 15 miles long, considerably shorter than the originally planned South DC intertie, and according to licensees, would face far less opposition before the Texas Public Utility Commission. It is contemplated that the capacity of the East intertie would increase from 500MW to 600MW, with 15% of capacity reserved for non-owner transactions, i.e., all requirements originally spelled out in the settlement agreement. The new intertie, as proposed, would be alternating current (AC) with back-to-back DC terminals -- the same deployment used in the North DC intertie -- and is expected to be less costly than the originally planned South DC intertie. (See "Notice of Filing of Petition for Modification of Commission Orders," dated May 6, 1986, attached as Appendix G.)

C. Wholesale Power Developments

TU Electric is actively engaged in wholesale power negotiations and transactions involving industrial and commercial power entities in and adjacent to its service area. The development of alternative power sources, primarily co-generators, the initiation of mandatory wheeling of co-generated power by the TPUC and the imposition of antitrust license conditions upon Comanche Peak have all affected TU Electric's dealings with wholesale power suppliers in northern and western portions of Texas.

In the early and mid-1980's, significant amounts of excess capacity began to appear in the Texas electric bulk power industry. The development of by-product power and energy and the dramatic downturn in the Texas economy (perpetuated by a decrease in the demand and subsequent drop in price for oil) contributed significantly to this glut of power and energy. As a result of this situation, many power systems in the state began to "shop around" for less costly sources of energy. TU Electric, being one of the largest power systems in the state, is involved in negotiations and transactions with its wholesale customers and potential wholesale customers pursuant to these power transfers. This extensive activity is highlighted in Appendix H.

D. Coordination Agreements

In August of 1981, ERCOT established a power brokerage system for the purchase and sale of economy energy. The brokerage was operated through the South Texas Interconnected Systems security center, which was comprised of power systems serving primarily in the southern and western portions of the state. This program was phased out in 1984 and was replaced by a computer controlled bulletin board which advises ERCOT members of power available for purchase throughout the intrastate Texas bulk power market.

The Texas Interconnected System (TIS) was merged with the Electric Reliability Council of Texas on September 4, 1981. TIS membership was dissolved when the merger was consummated.

In 1982 El Paso Electric Co. (El Paso) planning personnel met with TU Electric representatives to discuss long range possibilities for mutual cooperation and possible coordination between their two systems. No firm commitments or agreements were reached, however, EL Paso has recently requested additional meetings to explore the possibility of a sale of surplus capacity to TU Electric.

E. Litigation -- Ownership Share Changes

Comanche Peak is approximately nine years behind its originally projected completion date. Various factors have contributed to the construction delay; however, the three minority co-owners, Brazos, TMPA and Tex-LA, attributed a large part of TU Electric's failure to complete the plant on schedule to

imprudence. After discussions among the owners in late 1985 and early 1986 pursuant to the minority owners' concerns about the construction delay and their ability and responsibility to continue payments toward the plant's completion, Tex-La advised TU Electric in April of 1986 that Tex-La* would discontinue making further payments under the Joint Ownership Agreement (JOA). Tex-La charged that TU Electric had breached the JOA by mismanaging the construction of the plant and by its actions, relieved Tex-La of any further obligation to continue payments toward completion of the plant.

On May 29, 1986, TU Electric filed an action** against the minority co-owners charging them, inter alia, with breaching the JOA by not paying their proportionate share of the remaining costs attendant to the construction of Comanche Peak. TU Electric's suit asked the court to enforce the ownership agreement signed by the partners. On June 18, 1986, Tex-La and TMPA countersued in Texas State District Court in Travis County (No. 399,336). The following day, Brazos filed a separate suit against TU Electric, also in Travis County, Texas (No. 399,482). The minority owners' countersuits alleged that TU Electric, the utility responsible for construction of Comanche Peak, had failed to design and construct the plant in accordance with "prudent utility practice," as outlined in the JOA. The suits further alleged that as a result of imprudent construction practices employed by TU Electric, completion of the plant was

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* Brazos has not made any of the required construction payments since May of 1985 and Tex-La has not made any payments since May of 1986.

** The suit was brought in District Court, Dallas County, Texas, 14th Judicial District (No. 86-6809-A).

drastically delayed and costs substantially increased for the minority co-owners. The countersuit(s) asked the court(s) to terminate the ownership agreement, relieve the minority owners of their ownership obligations and refund the money already invested in the construction of Comanche Peak. All of the litigation initiated as a result of the disputes beteeen TU Electric and the minority co-owners was terminated by three separate settlement agreements.

By agreement dated February 12, 1988, TU Electric agreed to purchase and TMPA agreed to sell its 6.2% ownership interest in the Comanche Peak plant for approximately $456 million. TMPA and TU Electric have agreed to cease pending litigation* upon the execution of the settlement agreement. On June 30, 1988, TU Electric and Brazos signed an agreement providing for the purchase by TU Electric of Brazos' 3.8% share in Comanche Peak and termination of outstanding litigation between TU Electric and Brazos arising out of the dispute over interpretation of the Comanche Peak Joint Operating Agreement. Under the terms of the settlement agreement, TU Electric agreed to pay Brazos approximately $229 million, including $19 million for nuclear fuel, $15.3 million for litigation expenses, $2.5 million for transmission facilities and $322 thousand for other expenses. Moreover, an agreement was signed on March 23, 1989 between Tex-La and TU Electric that provided for the sale of Tex-La's 2-1/6% ownership interest in Comanche Peak to TU Electric for approximately $157 million. This agreement, like the Brazos and TMPA agreements, specifically provided for the

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* Tex-La Electric Cooperative of Texas, Inc. and Texas Municipal Power Agency v. Texas Utilities and Texas Utilities Electric Company, -- District Court of Travis County, Texas, 98th Judicial District: Cause No. 399,336; and Texas Utilities Electric Company v. Tex-La Electric Cooperative of Texas, Inc. et al. -- District Court of Dallas County, Texas, 14th Judicial District: Cause No. 86-6809-A.

termination of all pending litigation between the two parties pursuant to the Comanche Peak plant described supra. By letter dated May 4, 1989, TU Electric requested the Commission to amend its Comanche Peak construction permits to reflect this proposed change in ownership. As a result of these settlement agreements, TU Electric will own 100% of the Comanche Peak plant.

F. DC Transmission Rate Proceeding (FERC)

As part of the settlement agreement reached before the FERC, Central and South West, HL&P and Texas Utilities (now TU Electric) were required to file tariffs with the FERC for wheeling power to, from, or over the proposed direct current lines. Said tariffs were filed in 1982,* followed soon thereafter by intervention from various interested parties in and adjecent to the state of Texas. Intervening parties were represented primarily by many of the same municipal and cooperative power systems that intervened in the original DC transmission case before FERC (Dkt. No. EL79-8). (Those entities interested in transmission over the DC lines were also concerned with the proposed wheeling rates over the DC lines.) After hearings and extensive negotiations in the DC tariff proceeding,** a settlement was approved by the FERC on January 27, 1988 (38 FERC ¶61,050 - attached as Appendix I.)

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* Public Service Company of Oklahoma, et al.; FERC Dkt. No. ER82-545, et al.

** The parties include the following power systems: (1) all four CSW operating systems; TU Electric Co.; Houston Lighting & Power Co.; (2) and the following intervenors: Brazos Electric Power Cooperative; Mid-Texas Electric Cooperative, Inc.; Municipal Electric Systems of Oklahoma; South Texas Electric Cooperative, Inc.; Medina Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Tex-La Electric Cooperative, Inc.; Rayburn Country Electric Cooperative, Inc.; City of Lafayette, La.; Valley View Energy Corp.; Oklahoma Corporation Commission; Public Utility Commission of Texas; and the FERC staff.

The settlement provides for the movement of power and energy to, from or over the DC lines with the wheeling rates determined by a formula now employed throughout ERCOT termed the "positive difference megawatt-mile methodology" approved by the Texas Public Utility Commission. The settlement provides:

> "...that the initial rate for transmission service...shall be based upon each filing company's recently approved cost of service study on file at the TPUC [Texas Public Utility Commission] or the annual expenses found in FERC expense accounts...plus depreciation, federal income tax, and other associated taxes, and the TPUC allowed rate of return based on FERC plant accounts...less accumulated depreciation;...."*

The settlment provides for the CSW operating companies to employ a system-wide wheeling rate for power and energy moving over the North DC intertie. When the East DC intertie is completed (or no later than January 1, 1989, whichever is earlier), power and energy dispatched among the CSW operating companies to, from and over the DC ties (North or East), would be charged a wheeling rate based upon where said power and energy actually originates and terminates.

Under the terms of the proposed settlement, HL&P and TU Electric agreed to render transmission service to, from and over the DC interconnections. Due to the dissimilarities of the HL&P and TU Electric systems compared with those of the CSW system, the terms and conditions associated with the transmission of power and energy over the DC interconnections differed somewhat for HL&P and Texas Utilities.

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*FERC DC Wheeling Rate Offer of Settlement Agreement; "Memorandum of Agreement," p. 8.

G. Cap Rock Electric Cooperative, Inc.

On August 29, 1988, Cap Rock Electric Cooperative, Inc. (Cap Rock) submitted comments to the NRC, " . . . Concerning Significant Changes In Licensee's Activity That Warrant An Antitrust Review At The Operating License Stage" (hereinafter, "Comments"). In its Comments, Cap Rock alleges that TU Electric's " . . . current activities create and maintain a situation inconsistent with the antitrust laws and warrant the institution of an antitrust review and hearing by this Commission." (Comments, p. 1)

Although the period for providing comments pursuant to the Regulatory Guide 9.3 information submitted in conjunction with the Comanche Peak, Unit 1, antitrust operating license review ended on December 26, 1986, the Commission does consider additional information after this period if the activities in question have occurred after the comment period and could not have been reported during the period specifically designated for public comments. In instances where construction and subsequent fuel loading of a reactor is delayed, there are often substantial time intervals between completion of the construction permit antitrust review and completion of construction of an individual reactor--sometimes extending over several years. For this reason, staff engages in "monitoring reviews" and continual data collection for those plants that for whatever reason(s) experience construction or licensing delays.

Cap Rock alleges that TU Electric is inhibiting competition in its service area by: 1) abusing its monopoly power over transmission; 2) refusing to furnish a partial requirements wholesale power rate; and 3) maintaining a

price squeeze that adversely affects competition for wholesale power in TU's service area. Cap Rock maintains that TU Electric, by engaging in these practices, has violated the antitrust license conditions attached to the Comanche Peak construction permit.

Without ruling on the merits of Cap Rock's contentions, which are still under review, staff does not believe that the issues raised by Cap Rock represent changes that are within the scope of the Commission's Summer decision. The staff believes that TU Electric's activities, as alleged by Cap Rock, may represent recurrences of problems that were addressed and remedied during the antitrust construction permit review and subsubsequent operating license review by the Commission (via the institution of antitrust license conditions attached to the Comanche Peak construction permits).

Staff's antitrust review of the Comanche Peak licensees during the construction permit review in 1974 identified several areas of alleged abuse of market power by the principal licensee, TU Electric*, specifically, problem areas related to TU Electric's refusal to transmit power and energy for smaller power systems in the North Texas area. During the operating license antitrust review triggered by Central Power & Light Co. in the late 1970's (cf. Section IV, "Previous Antitrust Reviews"), a settlement agreement was reached among the

*The initial review was of TU Electric's predecessor holding company and operating subsidiaries.

Comanche Peak parties that included inter alia, a new set of license conditions that required TU Electric's predecessors and now TU Electric to " . . . sell full and partial requirements bulk power to requesting Entities in the North Texas Area. . . ." (License Condition 3.D(2)(k), per approved settlement agreement dated May 6, 1982.)

Staff has considered Cap Rock's allegations of market abuse by TU Electric in conjunction with its significant change operating license review of Comanche Peak. As noted, it appears as though the issues raised in Cap Rock's Comments are not new issues or problem areas that can be attributed to TU Electric since the antitrust construction permit review in 1974 or the antitrust review by the Commission in the late 1970's. Staff believes that the issues raised by Cap Rock could possibly represent issues that may be more germane in the context of a compliance proceeding, i.e., pursuant to non-compliance with the antitrust license conditions that are attached to the Comanche Peak construction permit. Indeed, Cap Rock alludes to this possibility in its Comments at page five when it states that, "Each of these refusals is in direct violation of the current antitrust license conditions [referencing License Conditions, 3.D.(2)(c), (d), (k) and (i)] and clearly contrary to the antitrust laws and the policies that underlie them." (Emphasis added.)

Finally, staff believes the allegations raised by Cap Rock pursuant to price squeeze are best remedied by the governing body with juridiction over retail and most of the wholesale power rates in Texas, i.e., the Texas Public Utility Commission and according to Cap Rock (Comments, p.7), the price squeeze issue is under review by this regulatory body.

VII. Summary and Conclusions

Prior to the antitrust settlement agreement before the Nuclear Regulatory Commission (NRC), competition for the purchase or sale of power and energy and related ancillary services in the Texas bulk power market was primarily limited to intrastate power transactions. This intrastate power network has remained intact for many years -- notwithstanding the fact that some power entities doing business on the perimeter of the state of Texas as well as some systems within the state have expressed interest in interstate bulk power transactions for a number of years. Although the Texas bulk power market has remained primarily intrastate in nature, there have been several changes since the NRC settlement in 1980 that have provided competitive stimuli to this market.

The change that has had the greatest impact in the Texas bulk power market has been the implementation of the joint settlement agreement, i.e., before the NRC and the Federal Energy Regulatory Commission. This settlement agreement required TU Electric, et al., to make their transmission facilities more available to power systems in Texas and thereby promote competition between intrastate and interstate power systems with the construction of two DC transmission lines. Although both of the direct current (DC) transmission ties with the Southwest Power Pool (SWPP) have not been completed, the North tie has been completed and the Central and South West operating systems are exchanging power and energy over this tie. Plans have been developed to expand the North tie (as contemplated in the settlement agreement) to accommodate a significant power transfer by a Texas co-generating entity. Capacity (15 percent)

in both DC interties has been reserved for non-owners who wish to engage in firm power transactions in the interstate market. Moreover, wheeling to, from or over the DC interties is now an available option to many power systems in Texas.

To remedy a growing need to redistribute power from co-generators concentrated in industrialized pockets in the state, the Texas Public Utility Commission promulgated rules requiring mandatory transmission or wheeling of co-generated power in Texas. These rules have enabled corporate entities, which heretofore have not participated in the Texas bulk power market, to market their by-product power, i.e., barriers to entry into the production and sale of bulk power in Texas have been lowered as a result of the newly adopted wheeling rules.

Increased coordination and cooperation among bulk power suppliers has resulted in a more open market in the state of Texas. TU Electric has implemented numerous transmission and scheduling agreements which have enabled a variety of power systems to shop for alternative power throughout the northern portion of the state.* Moreover, a computer controlled bulletin board, advising all

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*Although there have been allegations made recently by an electric cooperative power system in TU Electric's service area that TU Electric has not provided transmission and coordination services upon request, staff believes, in light of the Commission's Summer decision, that the issues raised by the cooperative are not germane to the Commission's "significant change" review, but may be more appropriately addressed in the context of a compliance proceeding.

members of the Electric Reliability Council of Texas (ERCOT) of available power and energy in the state is now in place, making "shopping" for power and energy easier for more power systems in the state -- thereby enabling power systems to better meet the individual needs of their customers.

All types of power entities in Texas, i.e., municipal, cooperative and investor owned, are beginning to explore joint generation projects both within and outside the state. The concept of interstate planning and participation in interstate power projects is a new one for most Texas power entities. Although the movement to interstate cooperation and competition is still in its embryonic stages in Texas, this movement was contemplated by and provided for in the antitrust settlement agreement before both the Nuclear Regulatory Commission and the Federal Energy Regulatory Commission. (The settlement agreement provides for requests for capacity increases and ownership purchases in the DC interties at intervals of every 3 years beginning in June of 1986 and lasting until June of 2004.) It is anticipated that this movement toward increased cooperation and competition will continue among intrastate power systems within Texas and also between intrastate power systems wishing to engate in joint power supply planning and power supply transactions across state borders.

Although there are still physical impediments to complete synchronous operations between most Texas power entities and systems outside of Texas, i.e., there are no major alternating current interconnections between ERCOT and the SWPP, the settlement agreement provided power systems inside of Texas, as well as in surrounding states, the opportunity to exchange power and

energy and engage in bulk power transactions. The staff views the settlement agreement as a major first step in opening up power supply options to a broad spectrum of power entities in ERCOT and the SWPP. The staff's analysis of the changes in the licensees' activities since the antitrust settlement has not identified any changed activity envisioned by the Commission as set forth in its Summer decision. Consequently, the staff recommends that no affirmative significant change determination be made pursuant to the application for an operating license for Unit 1 of the Comanche Peak Steam Electric Station.

APPENDIX A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

James A. Laurenson
Administrative Law Judge

In the Matter of		
HOUSTON LIGHTING & POWER COMPANY, et al. (South Texas Project, Units 1 and 2)		Docket Nos. 50-498A 50-499A
TEXAS UTLITIES GENERATING COMPANY, et al. (Comanche Peak Steam Electric Station, Units 1 and 2)		Docket Nos. 50-445A 50-446A
		May 6, 1982

MEMORANDUM AND ORDER
APPROVING SETTLEMENT AGREEMENTS
AND PROPOSED LICENSE CONDITIONS
AND DISMISSING PROCEEDING

Jurisdiction and Procedural History

On December 12, 1974, the Commission issued a construction permit for Comanche Peak Steam Electric Station, Units 1 and 2 (hereinafter "Comanche Peak"). On January 14, 1976, the Commission issued a construction permit for South Texas Project, Units 1 and 2 (hereinafter "South Texas"). In both cases the Attorney General advised the Commission that there was no need for an antitrust hearing. Thereafter, on June 4, 1976, Central Power and Light Company, one of the applicants in South Texas, filed a request for hearing on antitrust issues in that matter. On June 15, 1977, the Commission found "changed circumstances" in South Texas and requested further antitrust advice from the Attorney General. On February 21, 1978, the Attorney General advised the Commission that an antitrust hearing should be held in South Texas. On June 26, 1978, the Commission again found "changed circumstances" in Comanche Peak and requested further antitrust advice from the Attorney General. On August 1, 1978, the Attorney General advised the Commission that

an antitrust hearing should be held in Comanche Peak. In both cases, the Commission ordered antitrust proceedings to be commenced. Numerous cities, utilities, and electric cooperatives intervened in these two proceedings. The Department of Justice (hereinafter "Justice") and the Nuclear Regulatory Commission Staff (hereinafter "Staff") participated in both proceedings. The two proceedings were consolidated for discovery in 1978 and for hearing in 1980. Discovery took place in 1979 and 1980. On September 14, 1980, all of the applicants in both proceedings, Justice and the Staff, submitted two sets of proposed license conditions representing a settlement of these matters acceptable to the applicants, Justice, and Staff. The only intervenor which opposed the settlement and proposed license conditions was the Public Utilities Board of the City of Brownsville, Texas (hereinafter "Brownsville"). Thereafter, on December 24, 1980, Conformed Settlement License Conditions were filed.

A Conference of Counsel was held on April 13, 1982. Again, all parties to both of these matters, except Brownsville, reiterated their support for the settlement or, in any event, their lack of opposition to it. Brownsville was directed to respond to four specific questions concerning its opposition to the settlement. On April 22, 1982, Brownsville responded that it no longer opposed the proposed settlement and did not want the settlement to be rejected. Thus, there is no opposition to the proposed settlement and Conformed License Conditions.

Test for Settlement Approval

The Commission's Rules of Practice encourage settlement of contested proceedings as follows:

> "The Commission recognizes that the public interest may be served through settlement of particular issues in a 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." 10 C.F.R. § 2.759.

As noted in the preceding section, this consolidated proceeding has a long and arduous history punctuated by adversary relationships of competent counsel. Justice, which initially recommended that a hearing be held on antitrust issues in both matters, is now in accord with the settlement. Interested parties have been afforded the opportunity to intervene. All intervenors were given the opportunity to object to the settlement and proposed license conditions. None did so. Since no party to this consolidated proceeding opposes the settlement or proposed license conditions, it would not be fruitful or in the public interest to dissect the settlement agreements in search of an antitrust issue for hearing. Hence, I find that based upon the foregoing, the proposed settlement and license conditions are fair and reasonable and are in the public interest. Accordingly, the settlement is approved and the conditions shall be attached to the operating licenses. Since no further relief is requested by any party to this consolidated proceeding, this action is DISMISSED.

WHEREFORE, IT IS ORDERED this 6th day of May, 1982, that the settlement agreements are hereby APPROVED.

IT IS FURTHER ORDERED that the Conformed License Conditions for Comanche Peak attached hereto and incorporated herein, marked as "Appendix A-Comanche Peak" shall be immediately effective and shall be attached to the operating license of Comanche Peak.

IT IS FURTHER ORDERED that the Conformed License Conditions for South Texas, attached hereto and incorporated herein, marked as "Appendix B-South Texas" shall be immediately effective and shall be attached to the operating license of South Texas.

IT IS FURTHER ORDERED that this consolidated proceeding is DISMISSED.

James A. Laurenson
ADMINISTRATIVE LAW JUDGE

CONFORMED
December 1990

LICENSE CONDITIONS FOR COMANCHE PEAK STEAM ELECTRIC STATION UNITS 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, Shackelford, 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, operating or contractually controlling, or proposing in good faith to own, 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)(c), 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 or 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 or 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 purcheses). 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.

(5) (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(1) 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 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 1(b) and 1(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.

(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 a non-jurisdictional status 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.

(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 non-jurisdictional status 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 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 non-jurisdictional status under the Federal Power Act.

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.

Appendix A - Comanche Peak

(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 paragraphs 3.D.(2)(1)(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 proceedings 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.

APPENDIX B

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: C. M. Butler III, Chairman;
Georgiana Sheldon and A. G. Sousa.

Central Power and Light Company,	)	
Public Service Company of Oklahoma,	)	
Southwestern Electric Power Company,	)	Docket Nos. EL79-8
West Texas Utilities Company	)	E-9558

ORDER REQUIRING INTERCONNECTION AND WHEELING, AND APPROVING SETTLEMENT

(Issued October 28, 1981)

On February 9, 1979, four public utilities, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company, jointly filed an application 1/ for (1) exemption from state regulation preventing voluntary coordination of the utilities pursuant to section 205(a) of The Public Utilities Regulatory Policies Act of 1978 and (2) interconnection of facilities and the provision of transmission services pursuant to sections 202, 210, 211, and 212 of the Federal Power Act (Act), as amended. The four utilities are wholly owned subsidiaries of Central and South West Corporation (CSW) and hereafter will be referred to collectively as CSW. CSW requested approval of four synchronous alternating current interconnections between two electric reliability councils, the Electric Reliability Council of Texas (ERCOT) and the Southwest Power Pool (SWPP). The application was opposed by Houston Lighting and Power Company (HLP) and the operating subsidiaries 2/ of the Texas Utilities Company (TUC).

On June 27, 1980, in an attempt to settle, among other things, this proceeding and a related proceeding before the Nuclear Regulatory Commission, Central Power and Light Company filed an amended application seeking approval of two asynchronous direct current interconnections between electric utilities in ERCOT and SWPP. On July 28, 1980, CSW, HLP and TUC submitted an offer of settlement which would effectuate the proposal set forth in the amended application.

1/ This proceeding had its antecedents in a complaint filed on May 4, 1976, in Central Power and Light Co., Docket No. E-9558, alleging a number of utilities in Texas were public utilities subject to the jurisdiction and interconnection authority of the Commission.

2/ These companies are Dallas Power & Light Company, Texas Electric Service Company, and Texas Power & Light Company.

pwos. 11-17-81

Docket Nos. EL79-8 and E-9558

The offer of settlement has been supplemented on two occasions. The offer first was supplemented by agreement dated September 11, 1980, executed by the Commission staff, CSW, HLP, and TUC, and a supplemental offer of settlement was filed on October 8, 1980. Then on June 22, 1981, a second supplemental offer of settlement was filed, advising the Commission that an agreement had been executed by CSW and the U.S. Department of Justice (DOJ), under which DOJ agreed not to contest the offer of settlement as supplemented by the supplemental offer of settlement and as amended by the second supplemental offer of settlement. The offer of settlement, as supplemented, will hereafter be referred to as the "settlement agreement".

All parties in this proceeding, while reserving their respective positions in the event the settlement agreement is not accepted by the Commission, have either affirmatively joined in the settlement agreement or announced their intention to accept the proposed order without appeal. The administrative law judge certified the settlement agreement to the Commission as an uncontested offer of settlement on July 10, 1981.

The settlement agreement provides among other things that asynchronous interconnections will be installed between ERCOT and SWPP. These would consist of a North Interconnection, to be constructed by CSW, which would consist of two back-to-back direct current terminals with an initial capacity of 200 mw on either side of the ERCOT - SWPP border at Oklaunion, Texas. CSW will also construct an alternating current terminal at the Public Service Company of Oklahoma's power station in Lawton, Oklahoma, and a 345 kv AC transmission line from Lawton to the northern bus of the interconnection at Oklaunion, a distance of some 61 miles. The South Interconnection, to be constructed jointly by CSW and HLP, would consist of a direct current transmission line approximately 153 miles long with terminals having an initial capacity of 500 mw in Walker County, Texas, and at the South Texas Project (STP), a generating plant under construction near Bay City, Texas. Initially, CSW will pay for and be the owner of 100 percent of the North Interconnection. As to the South Interconnection, CSW will pay for and own 60 percent, while HLP will pay for and own the remaining 40 percent.

Other utilities in ERCOT and SWPP have an opportunity to participate in the construction and ownership of the interconnections on the condition that each such party pays its pro rata share of the capital costs of constructing the interconnection in which it wishes to participate and undertakes to pay its pro rata share of the costs of operating and maintaining the interconnection. Furthermore, at maximum intervals of three years from June 30, 1983, to June 30, 2004, other utilities which are members of ERCOT or SWPP will be given an opportunity to participate in planning and ownership of any capacity increases in the interconnections.

As part of their respective filed wheeling rates, CSW and HLP will each reserve 15 percent of the capacity of their respective direct current interconnection facilities for firm power wheeling. This reservation will be made for utilities in ERCOT and SWPP having loads less than 500 mw.

Rates and service will be determined from time to time in accordance with the procedures of sections 205 and 206 of the Act. CSW, HLP, and TUC agree to file rates with the Commission for wheeling power to, from, or over the proposed direct current interconnecting facilities which will roll in each of their alternating and direct current transmission costs with the result that any utility using any of their AC or DC lines for wheeling power in interstate commence will pay a rate designed to recover all costs and a reasonable return on both the AC and DC investment and related operating costs.

In addition, CSW must, upon request, consult with any entity which owns or operates electric generation or transmission facilities concerning the technical feasibility of any specific alternating current synchronous interconnection between ERCOT and SWPP which is proposed in good faith. This shall include assisting in the formulation and performance of load flow and stability studies and supplying technical and financial information necessary to facilitate the entity's planning of the proposed AC interconnection.

The Commission staff prepared an Environmental Analysis Report concerning the settlement proposal which concluded that the construction and operation of the proposed interconnections, conditioned upon certain construction and reporting requirements designed to mitigate environmental impacts, would not constitute a major federal action significantly affecting the quality of the human environment.

The Commission finds:

(A) The order issued herewith pursuant to section 210 of the Act is in the public interest, will encourage overall conservation of energy and capital, will optimize the use of facilities and resources, and will improve the reliability of each electric utility system to which this order applies.

(B) The order issued herewith pursuant to section 211(a) of the Act is in the public interest, would conserve a significant amount of energy, would significantly promote the efficient use of facilities and resources, would improve the reliability of each electric utility system to which the order applies and would reasonably preserve existing competitive relationships.

(C) The order issued herewith is not likely to result in a reasonably ascertainable uncompensated economic loss for any electric utility affected by the order, nor will it place an

undue burden on, unreasonably impair the reliability of, or impair the ability to render adequate service to customers of, any electric utility affected by the order.

(D) No party subject to this order has incurred or is likely to incur any costs as a result of this order which CSW would be obligated to reimburse under section 212(b) of the Act, except as otherwise ordered herein. The record demonstrates that CSW is ready, willing and able to reimburse each party subject to this order for costs incurred under this order.

(E) The settlement agreement is fair, reasonable and in the public interest and should be approved.

(F) All outstanding material issues in Central Power and Light Co., Docket No. E-9558 are either resolved or rendered moot by this order.

(G) The order issued herewith does not constitute a major federal action that significantly affects the quality of the human environment.

(H) The mitigation and reporting requirements ordered herein mitigate any potential adverse environmental effect to the human environment that could arise from this order.

The Commission orders:

(1) The settlement agreement is approved and adopted by the Commission. CSW, ELP, and TUC shall construct the interconnections and take all actions necessary to implement the settlement agreement.

(2) Central Power and Light Co., Docket No. E-9558, is dismissed with prejudice.

(3)(a) Compliance with this order or any provisions hereof shall not make TUC, any of TUC's operating subsidiaries, ELP, or any other electric utility or other entity a "public utility", as that term is defined by section 201 of the Act, and subject to the jurisdiction of the Commission for any purpose other than for the purpose of carrying out the provisions of sections 210, 211, and 212 of the Act.

(b) Compliance with this order or any provisions hereof shall not make TUC, any of TUC's operating subsidiaries, or ELP subject to the jurisdiction of the Commission for any purpose other than the purposes specified in this order and in the settlement agreement.

(4) Since the parties have already agreed on the terms and conditions upon which this order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them, no proposed order pursuant to section 212(c) of the Act is necessary. The Commission approves the settlement agreement, and pursuant to section 212(c)(2)(A) of the Act, the terms and conditions of that agreement relating to apportionment of costs, compensation and reimbursement are hereby incorporated in this order.

(5) The Commission is advised that this settlement is part of an overall settlement which involves cases and controversies at other agencies and in various courts and that settlement of this case is contingent upon parallel resolution in the other forums, including, but not limited to, Securities and Exchange Commission Admin. Proc. File No. 3-4951. Therefore, in order to accommodate an overall settlement, the Commission will entertain applications for rehearing filed by HLP, TUC, CSW or any other party that challenges this order, and will grant rehearing for further consideration until such time as HLP, TUC, and CSW either file a withdrawal of their respective applications for rehearing or file a notice that the settlement is withdrawn; provided, that until such time as applications for rehearing or the settlement are withdrawn by HLP, TUC, and CSW, the Commission, on its own motion (or motion of any party), after reasonable notice and an opportunity to comment, may withdraw this order and remand the case to the administrative law judge to proceed with the case on the original or amended application filed by CSW.

(6) The agreement between CSW and DOJ attached to the second supplemental offer to settlement is hereby incorporated by reference and approved by the Commission; provided however that no acts undertaken pursuant to the agreement, or this Commission's approval thereof or the incorporation of such agreement herein shall affect in any way the non-jurisdictional status of HLP or TUC provided in this order.

(7) CSW and HLP, and any other owners of the North or South Interconnections shall comply with the mitigation measures contained in the Commission staff's Environmental Analysis Report, dated October 29, 1980, to minimize the impact resulting from construction of the direct current transmission lines.

(8) CSW and HLP, and any other owners of the North or South Interconnections, shall consult with the United States Fish and Wildlife Service, the Texas Parks and Wildlife Department and the Texas State Historical Preservation Office in order to determine environmental guidelines appropriate to reasonably mitigate any potential adverse effect to the quality of the human environment that could arise from this order.

(9) No less than 90 days prior to the commencement of construction of each of the North and South Interconnections, the environmental guidelines determined for such interconnection pursuant to paragraph 8, supra, shall be submitted by the owner(s) to this Commission's Division of Environmental Analysis and to the Commission's Ft. Worth regional engineer. This report shall include the final right of way identified for the North and/or South Interconnections and shall identify the environmental guidelines adopted to reasonably mitigate any adverse effects to the quality of the human environment. Thereafter, until each interconnection is operational, annual reports shall be submitted by the owner(s) showing that the environmental guidelines have been observed.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, West Texas Utilities Company	)	Docket Nos. EL79-8 E-9558

ERRATA NOTICE

(November 5, 1981)

ORDER REQUIRING INTERCONNECTION AND WHEELING, AND APPROVING SETTLEMENT

(Issued: October 28, 1981)

1. Add footnote 3 to page 2, paragraph 2, at the end of sentence 1:

> 3/ On October 9, 1981, the Oklahoma Municipal Power Authority filed a petition to intervene and a motion to file comments out of time. On October 22, 1981, the Authority, after negotiating an agreement with CSW for participation in joint generating projects, filed notice of withdrawal of its intervention and now supports the proposed settlement.

2. Substitute the following corrected ordering paragraphs on pages 4, 5 and 6 of the order beginning after "The Commission orders:"

(1) The Oklahoma Municipal Power Authority's request to withdraw its Petition to Intervene is granted.

(2) The settlement agreement is approved and adopted by the Commission. Pursuant to Sections 210 and 211 of the Federal Power Act, CSW and SLP are hereby required to construct or cause to be constructed the necessary facilities to effect the interconnections as described in or consistent with the settlement agreement; SLP, TUC and CSW are hereby required to interconnect with each other and to wheel, transmit, sell, coordinate, commingle and exchange electric power as set forth in or consistent with the settlement agreement; and CSW, SLP and TUC are hereby required to take all further actions necessary to implement the settlement agreement.

(3) Central Power and Light Co., Docket No. E-9558, is dismissed with prejudice.

(4)(a) Compliance with this order or any provisions hereof shall not make TUC, any of TUC's operating subsidiaries, SLP, or any other electric utility or other entity a "public utility", as that term is defined by section 201 of the Act, and subject to the jurisdiction of the Commission for any purpose other than for the purpose of carrying out the provisions of sections 210, 211, and 212 of the Act.

(b) Compliance with this order or any provisions hereof shall not make TUC, any of TUC's operating subsidiaries, or SLP subject to the jurisdiction of the Commission for any purpose other than the purposes specified in this order and in the settlement agreement.

(5) Since the parties have already agreed on the terms and conditions upon which this order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them, no proposed order pursuant to section 212(c) of the Act is necessary. The Commission approves the settlement agreement, and pursuant to section 212(c)(2)(A) of the Act, the terms and conditions of that agreement relating to apportionment of costs, compensation and reimbursement are hereby incorporated in this order.

(6) The Commission is advised that this settlement is part of an overall settlement which involves cases and controversies at other agencies and in various courts and that settlement of this case is contingent upon parallel resolution in the other forums, including, but not limited to, Securities and Exchange Commission Admin. Proc. File No. 3-4951. Therefore, in order to accommodate an overall settlement, the Commission will entertain applications for rehearing filed by SLP, TUC, CSW or any other party that challenges this order, and will grant rehearing for further consideration until such time as SLP, TUC, and CSW either file a withdrawal of their respective applications for rehearing or file a notice that the settlement is withdrawn; provided, that until such time as applications for rehearing or the settlement are withdrawn by SLP, TUC, and CSW, the Commission, on its own motion (or motion of any party), after reasonable notice and an opportunity to comment, may withdraw this order and remand the case to the administrative law judge to proceed with the case on the original or amended application filed by CSW.

(7) The agreement between CSW and BOJ attached to the second supplemental offer to settlement is hereby incorporated by reference and approved by the Commission; provided however that no acts undertaken pursuant to the agreement, or this Commission's approval thereof or the incorporation of such agreement herein shall affect in any way the non-jurisdictional status of SLP or TUC provided in this order.

(8) CSW and SLP, and any other owners of the North or South Interconnections shall comply with the mitigation measures contained in the Commission staff's Environmental Analysis Report, dated October 29, 1980, to minimize the

Docket Nos. [illegible]
and E-9536

Impact resulting from construction of the direct current transmission lines.

(B) CSW and SWEPCO, and any other owners of the North or South Interconnections, shall consult with the United States Fish and Wildlife Service, the Texas Parks and Wildlife Department and the Texas State Historical Preservation Officer in order to determine environmental guidelines appropriate to reasonably mitigate any potential adverse effect to the quality of the human environment that could arise from this order.

(10) No less than 90 days prior to the commencement of construction of each of the North and South Interconnections, the environmental guidelines determined for such Interconnections pursuant to paragraph B, supra, shall be submitted by the Commission to this Commission's Division of Environmental Analysis and to the Commission's Ft. Worth regional engineer. This report shall include the final siting of any identified for the North and/or South Interconnections and shall identify the environmental guidelines adopted to reasonably mitigate any adverse effects to the quality of the human environment. Thereafter, until such Interconnection is operational, annual reports shall be submitted by the Commission advising that the environmental guidelines have been observed.

By the Commission.

Kenneth F. Plumb
Secretary

FEDERAL ENERGY REGULATORY COMMISSION

Ann Hodgdon, Esquire
Frederic C. Alexander, Esquire
Nuclear Regulatory Commission
Washington, D. C. 20555

EL20-8

APPENDIX C

318817

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ELECTRIC RATES: Settlement

Before Commissioners: Martha O. Hesse, Chairman;
Anthony G. Sousa, Charles G. Stalon
Charles A. Trabandt and C. M. Naeve

Central Power and Light Company,	)	
Public Service Company of Oklahoma,	)	Docket No. EL79-8-002
Southwestern Electric Power Company,	)	
West Texas Utilities Company	)	

ORDER APPROVING SETTLEMENT

(Issued July 23, 1987)

On June 10, 1987, Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Company ("SWEPCO"), West Texas Utilities Company ("WTU") (collectively, the "CSW Operating Companies"), Houston Lighting & Power Company ("HL&P") and Texas Utilities Electric Company ("TU Electric"), pursuant to section 385.602 of the Commission's Rules of Practice and Procedure, filed an Offer of Settlement with the Commission for its consideration and approval.

By this Order, we adopt and approve the Offer of Settlement and order the relief requested therein and in the Petition filed on May 1, 1986, by the CSW Operating Companies and HL&P, modifying the prior Orders of the Commission in Docket No. EL79-8 to the extent set forth herein.

Background

By its Order issued in Docket Nos. EL79-8 and E-9558 on October 28, 1981, as corrected by the Errata Notice issued November 5, 1981, 17 FERC ¶ 61,078, and its Order on Rehearing issued January 29, 1982, 18 FERC ¶ 61,100, incorporating by reference the form of "Order Approving Settlement" submitted with the Second Supplemental Offer of Settlement in such proceeding (the "Original Orders"), the Commission, among other things, approved a settlement requiring the construction of two asynchronous direct current interconnections between electric utilities in the Electric Reliability Council of Texas ("ERCOT") and electric utilities in the Southwest Power Pool ("SWPP"). The Original Orders also required the provision of transmission

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service for wheeling power to, from and over the interconnections by the CSW Operating Companies, HL&P and the electric utility operating companies of Texas Utilities Company, to which TU Electric is the successor.

The Original Orders specifically required the CSW Operating Companies and HL&P to "construct or cause to be constructed the necessary facilities to effect the interconnections as described in or consistent with the settlement agreement." The settlement agreement and the Original Orders described two interconnections: (1) an asynchronous direct current interconnection between PSO system facilities near Lawton, Oklahoma and WTU system facilities near Oklaunion, Texas, having an initial nominal capacity of 200 MW (the "North Interconnection"), to be constructed by the CSW Operating Companies; and (2) an asynchronous direct current interconnection between the CSW Operating Companies in Walker County, Texas and the South Texas Project (the "South Interconnection"), having an initial nominal capacity of 500 MW, to be constructed by the CSW Operating Companies and HL&P (the North Interconnection and the South Interconnection being referred to herein jointly as the "Interconnections").

The North Interconnection was placed in service on December 14, 1984. Paragraph (10)(c)(ii) of the "Order Approving Settlement" incorporated by reference in the FERC's Order issued January 29, 1982, provides that 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, provided certain conditions are met. Having complied with this provision in 1986 by offering participation to ERCOT and SWPP electric utilities, the CSW Operating Companies entered into an agreement to permit the expansion of the North Interconnection from a nominal capacity of 200 MW to a nominal capacity of 300 MW. The 100 MW of expanded capacity would be owned by the City of Austin, Texas.

On February 18, 1983, CPL, SWEPCO and HL&P filed with the Public Utility Commission of Texas ("TPUC") an application for the issuance of a certificate of convenience and necessity for the construction and operation of the South Interconnection. Because of continuing litigation regarding the application for certification and attendant delays in the certification, construction and operation of the South Interconnection, on May 1, 1986, the CSW Operating Companies and HL&P filed a Petition with the Commission proposing that the South Interconnection be relocated. Specifically, Petitioners requested that Original Orders be modified so as to (a) require construction of direct current terminals and such associated alternating current

transmission facilities as are necessary to effect an asynchronous direct current interconnection between SWEPCO's Welsh generating station and TU Electric's Monticello generating station (hereinbelow defined as the "East Interconnection"); (b) require the CSW Operating Companies, HL&P and TU Electric to interconnect with each other at the East Interconnection; (c) require such ownership of the East Interconnection by the CSW Operating Companies, HL&P and others, and such wheeling, coordination, commingling, sale and exchange of electric power to, from and over the East Interconnection or within the State of Texas as may facilitate its use; and (d) relieve the CSW Operating Companies and HL&P from their obligation to construct and operate the South Interconnection upon construction of the East Interconnection.

The State of Texas and the TPUC intervened, and while reserving their jurisdiction and authority regarding the need for and issuance of a certificate of public convenience and necessity for construction of the East Interconnection, do not oppose the Offer of Settlement or modification of the Original Orders as requested by Petitioners and recognize that the Original Orders and the proposed modification thereof preclude any consideration by the TPUC of the adequacy of existing service and the need for additional service.

All other parties, while reserving their respective positions in the event the Commission rejects or modifies the Offer of Settlement, have either affirmatively joined in the proposal or announced their intention to accept the proposed order without appeal.

The Offer of Settlement

The Offer of Settlement would resolve all matters at issue in this proceeding. The Offer of Settlement provides, as an alternative to construction of the South Interconnection, for the construction of an interconnection at a site in east Texas between SWEPCO's Welsh generating station and TU Electric's Monticello generating station, both located in Titus County, Texas, with an initial nominal capacity of 600 MW (the "East Interconnection"), and for the construction, operation, ownership and use thereof by the CSW Operating Companies, HL&P and TU Electric. The Offer of Settlement further provides that the North Interconnection may be expanded to a nominal capacity of 300 MW.

The East Interconnection is to consist of the following facilities: (1) a 345 kv AC switchyard facility at the TU Electric Monticello generating station necessary for the interconnection of the TU Electric AC electric system with the Welsh-Monticello Line (the "Monticello Switchyard Facility"); (2) the

"Welsh-Monticello Line," which is a 345 kv AC transmission line between the Monticello Switchyard Facility and the HVDC Terminal; (3) the "HVDC Terminal," consisting of high voltage direct current back-to-back converters and related facilities and the land on which it is located; and (4) a 345 kv AC switchyard facility at the SWEPCO Welsh generating station necessary for the interconnection of the SWEPCO AC electric system with the HVDC Terminal (the "Welsh Switchyard Facility").

The Offer of Settlement provides that the foregoing facilities are to be owned as follows: (1) the Monticello Switchyard Facility by TU Electric; (2) the Welsh-Monticello Line by SWEPCO; (3) the HVDC Terminal by CPL, SWEPCO, HL&P and TU Electric (the "Participants") in accordance with the ratio of their respective ownership interests set forth below to the total HVDC Terminal nominal capacity of 600 megawatts:

CPL	-	150 nominal megawatts
SWEPCO	-	150 nominal megawatts
HL&P	-	200 nominal megawatts
TU Electric	-	100 nominal megawatts

and (4) the Welsh Switchyard Facilities by SWEPCO.

Notwithstanding the separate ownership of certain of the facilities comprising the East Interconnection, all of such facilities are to be exclusively dedicated to the transmission of electric energy to, from and over the East Interconnection pursuant to the provisions of this Order.

The Participants shall compensate SWEPCO, as the owner of the Welsh-Monticello Line and the Welsh Switchyard Facilities, and TU Electric, as the owner of the Monticello Switchyard Facility, for use of such facilities by an annual facility charge sufficient to compensate SWEPCO and TU Electric for their costs, including a reasonable return on investment.

Discussion

As proposed by the Offer of Settlement, the construction of the East Interconnection will enable the parties to give effect to the Commission's Original Orders, consistent with the objectives of the Commission's Original Orders. In this regard, the opportunity afforded for electric utilities in ERCOT and SWPP to participate at this time in the ownership of the East Interconnection approved herein satisfies the undertaking in the Original Orders to first offer such opportunity with respect to the South Interconnection within three years after June 30, 1983. Notwithstanding this opportunity, nothing herein is to be

construed to terminate capacity reserved for qualified utilities in the East Interconnection, except as limited by the provisions of Paragraph (10)(c)(i) of the Original Orders.

The Offer of Settlement, which provides for the interconnection of the CSW Operating Companies in ERCOT with those in the SWPP and for the interconnection of HL&P and TU Electric in ERCOT with the SWPP pursuant to sections 210 and 212 of the Federal Power Act, as amended (the "Act"), is consistent with the objectives of the Commission's Original Orders and preserves the rights set out therein.

The Commission has jurisdiction to issue the order requested under sections 201(b)(2), 210, 211 and 212 of the Act. This order, which modifies in part the Original Orders issued in Docket No. EL79-8, is consistent with and supported by the findings of the Original Orders and the supporting evidence adduced herein.

The Commission has reviewed the engineering reports submitted by the Participants, and investigated the interconnections proposed in the Offer of Settlement, in order to determine whether they are in the public interest. 1/ Pursuant to sections 210 and 211(a) of the Act, this Order is in the public interest, will improve the reliability of each electric utility system to which this Order applies, and will reasonably preserve existing competitive relationships. The Order will not result in any reasonably ascertainable uncompensated economic loss for any electric utility affected by the Order, nor will it place an undue burden on, unreasonably impair the reliability of, or impair the ability to render adequate service to customers of any electric utility affected by the Order.

The Commission Staff prepared an Environmental Assessment concerning the settlement proposal and concluded that the construction and operation of the proposed interconnections would not constitute a major federal action significantly affecting the quality of the human environment. The implementation of the environmental recommendations ordered below will provide adequate mitigation of the potential adverse environmental effects of the actions required by this Order.

The Commission Orders:

1/ The Commission notes that the participants have indicated that transient stability studies related to the operation of the expanded North Interconnection will be conducted prior to construction of the expansion of that interconnection.

(A) The CSW Operating Companies, HL&P and TU Electric shall construct or cause to be constructed the necessary facilities, as described in Ordering Paragraph (E)(1) of this Order, to effect a direct current asynchronous East Interconnection with a nominal capacity of 600 MW between SWEPCO's Welsh generating station and TU Electric's Monticello generating station.

(B) Consistent with the expansion provisions of the Original Orders, the North HVDC Interconnection may be expanded to a nominal capacity of 300 megawatts.

(C) The CSW Operating Companies, HL&P and TU Electric shall interconnect with each other and with any other adjacent utility at (i) the East Interconnection, (ii) at locations which are presently in place and (iii) at such locations which may be mutually agreed upon by the CSW Operating Companies, HL&P or TU Electric and any utility in order to permit or to facilitate the transmission, purchase, sale, exchange, wheeling, coordination or commingling of electric power in interstate commerce, to, from or over such interconnections (including the North Interconnection and the East Interconnection, being referred to herein jointly as the "HVDC Interconnections") or within ERCOT, by or for the CSW Operating Companies, HL&P or TU Electric, or any other electric utility. The CSW Operating Companies, HL&P and TU Electric will maintain and use any such interconnection for any purpose, except in and during emergencies as determined by the CSW Operating Companies, HL&P or TU Electric or except when otherwise ordered by a governmental entity with putative authority, regardless of the source of the electric power in interstate commerce, and whether or not authorized or ordered by the Commission or by any other governmental authority. However, the CSW Operating Companies, HL&P and TU Electric shall not be required to maintain any such interconnection and may each disconnect in order to assert rights under the Act if any utility or federal power marketing agency proposes or proceeds to construct or operate a facility for the transmission of electric power in interstate commerce, other than the facilities provided for in this Order, without first obtaining an order under the provisions of sections 210, 211 and 212 of the Act. Unless any such interconnection is a non-jurisdictional interconnection ordered by the Commission under the provisions of sections 210, 211 and 212 of the Act, (i) HL&P may disconnect in the event it determines that to maintain any such interconnection would affect its non-jurisdictional status under the Act, and (ii) TU Electric may disconnect in the event it determines that to maintain any such interconnection would affect its non-jurisdictional status under the Act. In any event, HL&P or TU Electric may elect to maintain any interconnection without prejudice to its non-jurisdictional status set forth in Ordering Paragraph (I).

(D) The CSW Operating Companies, HL&P and TU Electric shall permit other utilities to participate in the construction and

ownership of the East Interconnection on the condition that each such other party that wishes to participate pays its pro rata share of the costs of constructing the East Interconnection 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 among the Participants in the East Interconnection.

(E) (1) The East Interconnection shall consist of the following facilities: (a) the Monticello Switchyard Facility, which shall be owned by TU Electric; (b) the Welsh-Monticello Line, which shall be owned by SWEPCO; (c) the HVDC Terminal, which shall be owned by the Participants in accordance with the ratio of their respective ownership interests set forth below to the total HVDC Terminal nominal capacity of 600 megwatts:

CPL	-	150 nominal megawatts
SWEPCO	-	150 nominal megawatts
HL&P	-	200 nominal megawatts
TU Electric	-	100 nominal megawatts

and (d) the Welsh Switchyard Facilities, which shall be owned by SWEPCO.

(2) Notwithstanding the separate ownership of certain of the facilities comprising the East Interconnection, all of such facilities shall be exclusively dedicated to the transmission of electric energy to, from and over the East Interconnection and for use by the Participants in proportion to their relative ownership interest in the HVDC Terminal, by any qualified utility having a right to the use of the East Interconnection pursuant to an arrangement entered into in accordance with the provisions of Paragraph (G)(5), or by any electric utility having such right pursuant to the provisions of Paragraph (H).

(3) The Participants shall compensate SWEPCO, as the owner of the Welsh-Monticello Line and the Welsh Switchyard Facilities, and TU Electric, as the owner of the Monticello Switchyard Facility, for use of such facilities by an annual facility charge sufficient to compensate SWEPCO and TU Electric for their cost, including a reasonable return on investment. Said facility charges, determined in compliance with this Order, shall be incorporated in an agreement between the owner-Participant and the user-Participants. Such agreements shall unilaterally be filed by each owner-Participant from time to time with the Commission, and the Commission shall review such agreements pursuant to the procedures of section 205 of the Federal Power Act. The first such agreements shall be filed so

as to become effective prior to the commercial operation of the facilities.

(F) Subject to the provisions of section 203 of the Federal Power Act, ownership or use of the East Interconnection or the North Interconnection, including the rights and obligations established herein, may be transferred at any time without further order of the Commission.

(G) (1) Except as other otherwise provided in Ordering Paragraphs (G)(4) and (5), and unless limited by contract, each Participant or owner shall use and have the exclusive right to the use, for any purpose, of that HVDC Interconnection in which it has an ownership interest, to the extent of its ownership interest that HVDC Interconnection, or in the case of the East Interconnection, to the extent of its ownership interest in the HVDC Terminal.

(2) HL&P and TU Electric shall use the HVDC Interconnections for any purpose, including the purchase, sale, exchange, wheeling, coordination, commingling or transfer of electric power and energy in interstate commerce.

(3) The CSW Operating Companies shall use the HVDC Interconnections for any purpose, including the central dispatch of energy between and among the CSW Operating Companies to enhance the economic operation of the CSW Operating Companies as a single integrated and coordinated system.

(4) Any capacity in the HVDC Interconnections which may be unused at any point in time may be used by any other system in ERCOT or SWPP upon request, subject to interruption by any Participant or owner desiring to utilize its entire capacity and subject to payment of such rates as shall be adequate to recover the cost of such use of the Interconnection, and other terms and conditions as may be unilaterally filed by the Participant or owner from time to time with the Commission 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 211(d)(3) of the Act.

(5) The CSW Operating Companies, HL&P and TU Electric will each reserve 15% of their respective capacity in the HVDC Interconnections for firm power wheeling and purchase by qualified utilities (as that term is defined in the Commission's Original Orders) under the terms, conditions and limitations provided by the Commission's Original Orders.

(a) All requests for reserved capacity from qualified utilities must be accompanied by a signed binding agreement for

the reservation of the capacity sought or for the purchase of such capacity.

(b) If, in response to the annual solicitation to qualified utilities for reserved capacity, the aggregate of requests to use and/or purchase such capacity exceeds the amount of uncommitted reserved capacity, then capacity will be made available pursuant to such requests on the following basis:

(i) Each qualified utility requesting reservation capacity shall be entitled to contract for the use of, or to purchase, a pro rata share of the available reservation capacity based on the proportion its request bears to the total of all requests.

(ii) The agreement signed by the requester shall provide for its cancellation or for reduction in the amount to be contracted for or purchased in the event that the requester is unable to receive as large a share of capacity as requested due to the pro rata reduction set forth in subparagraph (b)(i) above. If a requester finds it necessary to cancel its request as a result of the pro rata reduction, the capacity so relinquished will be divided among the remaining requesters on a pro rata basis pursuant to subparagraph (b)(i) above.

(c) Purchase of reservation capacity by qualified utilities in the East Interconnection shall be on a pro rata basis from the CSW Operating Companies, HL&P and TU Electric unless the CSW Operating Companies, HL&P and TU Electric otherwise agree.

(6) Whenever planning is undertaken to increase the capacity of the HVDC Interconnections, but at intervals of no more than every three years after June 30, 1986, with respect to the North Interconnection, and after June 30, 1989, with respect to the East Interconnection, until June 30, 2004, electric utilities in ERCOT and SWPP shall be given the opportunity to participate in the planning of increases in the capacity of the HVDC Interconnections and of participating in the ownership of any incremental capacity added, provided again that each party that wishes to participate pays its pro rata share of all costs and undertakes to pay its pro rata share of the costs of operating and maintaining that HVDC Interconnection and agrees further to be bound by the terms and conditions of the applicable Agreement among the owners or Participants of that HVDC Interconnection. Any such planned increase in the capacity of either HVDC Interconnection shall be submitted to the Commission for

action pursuant to sections 210, 211 and 212 of the Federal Power Act.

(H) The CSW Operating Companies, HL&P and TU Electric shall wheel power for each other and for other electric systems in ERCOT and SWPP to, from and over the East Interconnection at the rates and under the terms and conditions set forth in the settlement tariffs submitted in Docket Nos. ER82-545-000, et al., except that such tariffs shall be modified as necessary to comply with this Order. Such modified tariffs shall be filed with the Commission as compliance filings within ninety (90) days after entry of this Order.

(I) Compliance with this Order and the Offer of Settlement shall not make HL&P or TU Electric or any other electric utility or other entity a "public utility" as that term is defined by Section 201 of the Act and subject to the jurisdiction of the Commission for any purpose other than for the purpose of carrying out the provisions of sections 210, 211 and 212 of the Act.

(J) As a result of this Order, HL&P and TU Electric may be or will be operating in interstate commerce by virtue of the interconnections required by this Order and the wheeling, transmission, purchase, sale, exchange, coordination or commingling of electric power to, from or within ERCOT, including the ownership or use of facilities therefor, or by virtue of the synchronous or asynchronous operation of electromagnetic unity of response of interconnected electric facilities; HL&P and TU Electric, however, shall not be subject to jurisdiction under section 201 of the Act by virtue of section 201(b)(2) of the Act.

(K) In the event any other electric utility is determined to be subject to jurisdiction as a public utility under the Act as a direct or indirect result of the flow of power and energy through the North Interconnection or the East Interconnection, or ownership of the North Interconnection or the East Interconnection, such jurisdiction shall not affect the non-jurisdictional status of HL&P or TU Electric.

(L) Since the parties have already agreed on the terms and conditions upon which this Order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them, no proposed order pursuant to section 212(c) of the Federal Power Act is necessary. The Commission approves the settlement and, pursuant to Section 212(c)(2)(A) of the Act, the terms and conditions of the settlement relating to apportionment of costs, compensation and reimbursement as set forth therein are hereby incorporated in this Order.

(M) The owners of the 100 mw expansion of the North Interconnection shall submit to the Commission transient stability

studies relating to the expanded North Interconnection prior to the construction of that interconnection.

(N) The Participants in the East Interconnection shall comply with the mitigation measures contained in Attachment A hereto in order to minimize the environmental impact resulting from construction of the AC transmission lines.

(O) Not less than 90 days prior to the commencement of construction (right-of-way clearing) of the East Interconnection, the Participants shall submit to the Division of Environmental Analysis, Office of Hydropower Licensing, a report detailing compliance with Environmental Recommendations Nos. 1 through 4 of Attachment A. Such report shall include the final right-of-way identified for the East Interconnection. Not less than 120 days after the transmission line is energized, the Participants shall submit a report detailing compliance with Environmental Recommendations Nos. 5 and 6 of Attachment A.

(P) Subject to reasonable contingencies, such as possible delays in complying with the environmental requirements of this Order, and force majeure, the CSW Operating Companies, HL&P and TU Electric will commit to cause the East Interconnection to be installed and operational within four (4) years of the date this Order is no longer subject to review.

(Q) Upon construction of the East Interconnection, the CSW Operating Companies and HL&P shall be relieved of any obligation to construct, install, expand or operate or to make capacity available in the South Interconnection as required by the Original Orders and from any obligation to transmit power for other electric utilities to, from and over the South Interconnection.

(R) The provisions of the Commission's Original Orders, except as herein modified, are unchanged by this Order, and the rights and obligations established thereunder shall remain in full force and effect.

(S) The Commission's approval of this settlement does not constitute approval of or precedent regarding any principle or issue in this proceeding.

By the Commission.

(S E A L)

Kenneth F. Plumb

Kenneth F. Plumb,
Secretary.

318525

Docket No. EL79-8-002

Attachment A

Environmental Recommendations

1. SWEPCO, before starting any land-clearing or land-disturbing activities, should consult with the landowners, the Soil Conservation Service and the U.S. Fish and Wildlife Service about developing a plan that includes the best management practices to control erpsion and sedimentation as a result of project construction and maintenance.

   SWEPCO should include in the plan an implementation schedule, monitoring and maintenance programs for project construction, and provisions for periodic review of the plan and for making any necessary revisions to the plan.

2. SWEPCO, after consultation with the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department, should locate the final right-of-way (ROW) alignment of the East Interconnection so that bottomland hardwoods and other wetlands are avoided. Where bottomland hardwoods and other wetlands cannot be avoided, SWEPCO should, as much as possible, avoid the placement of transmission towers within wetlands, span streams, and allow shrubs to revegetate the ROW following construction.

3. SWEPCO, after consultation with the U.S. Fish and Wildlife Service and the Texas Parks and Wildlife Department, should develop a wildlife mitigative plan that will provide for the clearing, revegetation, and maintenance of the project transmission line right-of-way for the benefit of wildlife resources.

4. SWEPCO, after consulting with the State Historic Preservation Office (SHPO), should conduct a survey of the area of the project's potential environmental impact (APEI). The survey should be of sufficient scope and intensity to identify the properties that are listed on or eligible for listing on the National Register of Historic Places that are located within the APEI and should culminate in a survey report that adequately documents every National Register and eligible property in the APEI. This survey report, along with the comments and recommendations of the SHPO, should be filed with the Commission before SWEPCO begins constructing the proposed transmission line.

In the survey report, SWEPCO should identify each National Register and eligible property in the APEI, according to the National Register criteria of eligibility in 36 Code of Federal Regulations (CFR) 60. SWEPCO should specify the criteria that each National Register and eligible property satisfies, and should describe each National Register and eligible property according to the applicable criteria.

In the survey report, SWEPCO should evaluate the effect that constructing and operating the transmission line would be likely to cause at each National Register and eligible property according to the criteria of effect in 36 CFR 800. SWEPCO should then determine, in the case of each effect, whether or not the effect would likely be adverse. SWEPCO should apply the criteria of effect and adverse effect to the specific characteristics of the National Register and eligible properties that have substantially contributed to satisfying the National Register criteria of eligibility.

In the survey report, SWEPCO should describe measures to mitigate adverse effects to the specific characteristics of National Register and eligible properties that have contributed substantially to satisfying the National Register criteria of eligibility.

SWEPCO should apply the criteria of eligibility of the criteria of effect and adverse effect and should present its determinations of eligibility, effect, and adverse effect to the SHPO in formal written form prior to filing these data with the Commission and should request, pursuant to Section 106 of the National Historic Preservation Act, that the SHPO concur with SWEPCO's determinations of eligibility, effect, and adverse effect.

SWEPCO should not begin construction of the transmission line in a manner or location that might affect a National Register or eligible property until all requirements of the National Historic Preservation Act that pertain to the construction and operation of the line have been satisfied and the Commission has so informed SWEPCO.

5. SWEPCO should coordinate with the operators of the two radio towers (FAA and Southwestern Bell) located in the project area to insure that the interconnection would not degrade the performance of these facilities. The results of coordination with the operators should be filed with the Commission.

6. SWEPCO should conduct a radio noise survey along the transmission line ROW at appropriate locations that are relatively free of electrical noise from other sources. SWEPCO should use an AM radio receiver in the survey, and should evaluate the reception of the principal broadcasting stations serving the area at each location both with the line energized and deenergized. The results of this survey should be filed with the Commission.

APPENDIX D

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES & EXCHANGE COMM.
MAILED FOR [illegible]
APR [illegible] 1982

PUBLIC UTILITY HOLDING COMPANY ACT OF 1935
Release No. 22439 / April 1, 1982

FILED NO. [illegible]

In the Matter of :

CENTRAL AND SOUTH WEST CORPORATION :
CENTRAL POWER AND LIGHT COMPANY
PUBLIC SERVICE COMPANY OF OKLAHOMA :
SOUTHWESTERN ELECTRIC POWER COMPANY
TRANSOK PIPE LINE COMPANY :
WEST TEXAS UTILITIES COMPANY
:

ADMINISTRATIVE PROCEEDING
File No. 3-4951

(59-5)

MEMORANDUM OPINION AND ORDER TERMINATING PROCEEDING

On February 16, 1945, we issued a decision in which we determined that the electric utility system of Central and South West Corporation ("CSW") was an integrated electric public utility system, as defined in Section 2(a)(29)(A) of the Public Utility Holding Company Act of 1935 ("Act"), and that, subject to certain adjustments which have long been effected, CSW complied with the requirements of Section 11(b)(1) of the Act. The Middle West Corporation, et al., 18 SEC 296 (1945). CSW has been and is a registered holding company.

CSW owns all of the outstanding shares of common stock of the following operating electric utility companies ("operating companies"). Central Power and Light Company ("CP&L") operates in a portion of south Texas; Public Service Company of Oklahoma ("PSO"), in portions of eastern and southwestern Oklahoma; Southwestern Electric Power Company ("SWEPCO"), in portions of east Texas, western Arkansas and northwestern Louisiana; and West Texas Utilities Company ("WTU"), in a part of west central Texas.

Physically, the CSW system comprises roughly three-quarters of a circle with a center in north central Texas. The operating companies are interconnected end to end around this arc, extending from CP&L in south Texas, between the Rio Grande and the Gulf of Mexico, through a relatively narrow corridor in west Texas (WTU) to interconnect with PSO. PSO interconnects in eastern Oklahoma with SWEPCO. The operating companies together serve a territory of approximately 152,000 square miles with an estimated population of 3,000,000. The largest cities served are Corpus Christi, Abilene, Laredo, San Angelo and Longview in Texas, Tulsa and Lawton in Oklahoma, Shreveport and Bossier City in Louisiana, and Texarkana in Texas and Arkansas. Pertinent economic data concerning the operating companies for the year ended December 31, 1980, is as follows:

	Net Utility Plant (millions)	Operating Revenues (millions)	Generating Station Capacity (MW)	Net System Maximum Demand (MW)	KWH Sales (billions)
CP&L	$ 1,386	$ 670	3,882	2,505	13.4
PSO	1,190	522	3,969	2,839	16.4
SWEPCO	995	385	3,029	2,652	13.2
WTU	226	181	1,054	954	5.2

On March 26, 1974, the Oklahoma cities of Altus, Frederick, Cordell and Mannford and Verdigris Valley Electric Cooperative and Indian Electric Cooperative, Inc., wholesale customers of PSO, complained to the Commission that CSW had ceased to operate as an integrated electric utility system and requested, among other things, that the order of February 16, 1945, be modified or revoked. Section 11(b) provides that the Commission may revoke or modify a prior order issued thereunder if "it finds that the conditions upon which the order was predicated do not exist."

On January 30, 1976, the Commission ordered that a hearing be held to reconsider in light of current conditions the conclusion reached in 1945 regarding CSW's compliance with the integration standards of Section 11(b)(1), and to determine whether plans developed by CSW and its subsidiaries affecting future operations of the system could achieve compliance with Section 11(b)(1). 1/ Under that section, the Commission is directed to limit the operations of a registered system to "a single integrated public-utility system." Section 2(a)(29)(A) defines that term with respect to an electric utility system as one whose utility assets "are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system . . ."

PSO and SWEPCO are members of the Southwest Power Pool ("SWPP"), and are interconnected with a nationwide system of interconnected generation and transmission facilities. CPL and WTU operate in the State of Texas and are interconnected with other utilities that comprise the Electric Reliability Council of Texas ("ERCOT"). All the members of ERCOT are electrically isolated from PSO, SWEPCO, and other utilities operating in whole or in part in states other than Texas. The ERCOT interchange agreements in effect preclude direct or indirect exchange of electric energy with utilities receiving or transmitting electric energy in interstate commerce. 2/ When CP&L and WTU joined ERCOT, they ceased to exchange electric energy with PSO and SWEPCO, except for a special arrangement under which the northern division of

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1/ HCAR No. 19361 (January 30, 1976), as amended by HCAR No. 20031 (May 18, 1977).

2/ Cf. Federal Power Commission v. Florida Power & Light Co., 404 U.S. 453 (1972) (certain intrastate interconnections jurisdictional under Federal Power Act due to related interstate energy flows).

WTU, adjacent to the Oklahoma border, could operate alternately either with PSO or with ERCOT as long as simultaneous interconnection was avoided.

The proceeding commenced before an administrative law judge in 1976. Certain state agencies and authorities were admitted as parties pursuant to Rule 9(a) of the Commission's Rules of Practice, and limited participant status pursuant to Rules 9(c) and (d) was granted to certain others, principally Houston Lighting and Power Company ("HL&P"), an operating electric utility company serving Houston and a portion of the gulf coast area of Texas, and Texas Utilities Company ("TU"), an exempt electric utility holding company whose subsidiaries serve a large portion of north central Texas, including the Dallas-Fort Worth area, the principal other members of ERCOT.

The integration plans initially submitted by CSW in this proceeding proposed to reestablish interconnections among its subsidiaries, but turned on whether interconnections with ERCOT could be maintained or directed. Controversies developed concerning these matters and spawned related proceedings before the Federal Energy Regulatory Commission ("FERC") 3/, the Nuclear Regulatory Commission ("NRC") 4/, and the Public Utility Commission of Texas ("TPUC") 5/, and litigation in federal and state courts involving those proceedings. 6/ In addition, there was separate litigation in essence challenging the validity of the ERCOT arrangements under federal antitrust laws. 7/

In 1978 Congress enacted the Public Utility Regulatory Policies Act of 1978. 8/ Under that statute FERC was given authority to order, under prescribed standards, certain interconnection and wheeling relief affecting electric utilities not operating in interstate commerce, with the proviso that the order would not make such an electric utility subject to FERC's jurisdiction for any other purpose. On July 28,

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3/ FERC Docket Nos. E-9558 and EL 79-8.

4/ NRC Docket Nos. 50-445A, 50-446A, 50-498A and 50-499A.

5/ TPUC Docket No. 14.

6/ See, e.g., Central Power and Light Company v. Federal Energy Regulatory Commission, 575 F.2d 937 (D.C. Cir. 1978), cert. denied 439 U.S. 981 (1978); Public Utility Commission of Texas v. Federal Energy Regulatory Commission (5th Cir. No. 79-3054); Tex-La Electric Cooperative v. Federal Energy Regulatory Commission (D.C. Cir. No. 80-1173); Central Power and Light Company v. Public Utility Commission of Texas (53rd Judicial District of Texas, No. 261,605).

7/ West Texas Utilities Company v. Texas Electric Service Company, 470 F. Supp. 798 (N.D. Tex 1979), on appeal 5th Cir. No. 79-2677.

8/ Pub. L. No. 95-617 (November 9, 1978).

1980, CSW, TU and HL&P submitted an offer of settlement to FERC in the proceedings before that agency. That settlement agreement, as supplemented ("Settlement Agreement"), provides for a comprehensive resolution of the disputes in all forums. It was approved by FERC by order dated October 28, 1981. 9/ That order, and the Settlement Agreement (including underlying evidentiary material upon which it was predicated), are in evidence in this proceeding.

The Settlement Agreement, among other things, provides for the installation of two asynchronous interconnections between ERCOT and SWPP. These would consist of a North Interconnection, to be constructed by CSW, which would consist of two back-to-back direct current terminals with an initial capacity of 200 mw on either side of the ERCOT-SWPP border at Oklaunion, Texas. CSW will also construct an alternating current terminal at PSO's power station in Lawton, Oklahoma, and a 345 kw AC transmission line from Lawton to the northern bus of the interconnection at Oklaunion, a distance of approximately 61 miles. The South Interconnection, to be constructed jointly by CSW and HL&P, would consist of a direct current transmission line approximately 151 miles long with terminals having an initial capacity of 500 mw in Walker County, Texas, and at the South Texas Project, a generating plant under construction near Bay City, Texas. These planned facilities will in effect interconnect WTU and PSO (North Interconnection) and SWEPCO and CPL (South Interconnection).

The record before FERC, and as supplemented in this proceeding, indicates that substantial savings are expected to be achieved in revenue requirements to ratepayers of the CSW subsidiaries from operation of the CSW system in an interconnected mode as a result of the planned interconnections between ERCOT and SWPP. The order issued by FERC finds, among other things, that the construction of the planned interconnection facilities "is in the public interest, will encourage overall conservation of energy and capital, will optimize the use of facilities and resources, and will improve the reliability of each electric utility system to which the order applies." The FERC order is a final order.

On February 8, 1982, CSW, pursuant to stipulation with HL&P and TU, moved for an order specifying further procedures in this proceeding, including waiver of an initial decision by the administrative law judge and consent to the interested division of the Commission assisting in the preparation of the Commission's decision. On February 9, 1982, the administrative law judge issued a notice to all parties and participants concerning the motion. There being no objection, the motion was granted on February 26, 1982.

9/ Central Power and Light Company, et al., FERC Docket Nos. EL 79-8 and E-9558 (October 28, 1981). That order has been amended, in respects not here material, by orders dated November 5, 1981, and January 29, 1982.

In view of the foregoing, the issues which led to the institution of this proceeding have been disposed of and resolved.

IT IS ORDERED, accordingly, that this proceeding be, and it hereby is, terminated, and that the Commission's decision and order of February 16, 1945, continues to remain in effect.

By the Commission.

George A. Fitzsimmons
Secretary

APPENDIX E

TU ELECTRIC TRANSMISSION AND SCHEDULING AGREEMENTS

TU Electric has entered into several transmission and scheduling agreements that have facilitated power flows benefiting a number of power systems in Texas. These agreements are briefly described below:

1. In August of 1986, the City of Brownsville, Texas and TU Electric reached an agreement whereby TU Electric will provide wheeling service for the output from Brownsville's ownership share in a coal fired plant (Oklaunion) near the Texas-Oklahoma border.

2. In October of 1984, TU Electric entered into a scheduling agent agreement with Tex-La and Rayburn Country Electric Cooperative whereby TU Electric will deliver energy and capacity purchased by Tex-La and Rayburn Country from the Southwestern Power Administration. (TU Electric provides the transmission system to link the generation from the hydroelectric units at Denison Dam to the cooperative's load centers.)

3. TU has agreed to act as the scheduling agent for delivery of economy energy from Houston Lighting and Power Co. to Tex-La.

4. In 1986 TU Electric agreed in principle to provide needed interconnection and wheeling services to Texas-New Mexico Power Co.'s proposed Robertson County fluidized-bed power plant.

5. During the period 1986 through 1988, TU Electric acted as the transmission agent for 12-15MW of power sold to the City of Weatherford, Texas.

6. In 1980, TU Electric transmitted 20MW of power from the Texas Municipal Power Pool to the South Texas Electric Cooperative.

7. TU Electric has entered into equivalent power transmission agreements with the Texas Municipal Power Authority and Brazos Electric Power Cooperative from 1979 to 2014.

8. TU Electric has agreed to transmit 52MW of power from the Oklaunion power plant to the Central Power & Light Co. during the period from 1986 to 2021.

9. A transmission agreement entered into in 1986 between TU Electric and the City of Austin provides for the delivery of 68MW of power from the Oklaunion power plant.

10. In 1986 TU Electric wheeled 60MW of power to the Texas-New Mexico Power Co. from the City of Bryan, Texas.

11. During the period 1983-87, TU Electric wheeled amounts of power ranging from 300MW to 800MW to Houston Lighting & Power Co. from the City of Austin.

12. During the period 1983-87, TU Electric wheeled amounts of power ranging from 200MW to 500MW to Houston Lighting & Power Co. from the City of San Antonio.

13. In 1985, TU Electric wheeled 7MW of power from the Central Power & Light Co. and 150MW (200MW in 1986) from the Texas Municipal Power Pool to the West Texas Utilities Co..

14. TU Electric signed an agreement with Dow Chemical Co. in 1985 (four month contract) for the purchase of 300MW from Dow's Freeport, Texas chemical plant. The power was wheeled over HLP's transmission lines and according to a Dow spokesperson, new opportunities to sell cogenerated power have resulted from the TPUC's mandatory wheeling rules.

15. TU Electric has agreed to transmit power over its system supplying the City of Austin with 100MW from a waste-to-energy plant located near the Texas-Oklahoma border.

16. TU Electric has scheduled economy energy over its transmission system for the following power systems:

    a. Tex-La (300MW); from HL&P in 1986;
    b. Tex-La (100MW); from West Texas Utilities in 1987;
    c. Rayburn Country Coop. (300MW); from HL&P in 1987; and
    d. Texas-New Mexico Power Co. (300MW); from HL&P in 1988

17. Moreover, throughout 1985 and 1986 TU engaged in several "wheeling" transactions with other Texas power systems whereby power and energy was transmitted over their transmission facilities to TU Electric's service area.

18. TU Electric is currently involved in several wheeling transactions with cogenerating systems in the state of Texas. TU Electric has agreed to purchase varying amounts of cogenerated power from these entities ranging in amounts from 70MW to 400MW with some extending through 1999. (Much of this activity has been perpetuated by Texas PUC Rule 23.66 requiring wheeling of cogenerated power in Texas.)

APPENDIX F

TU ELECTRIC INTERCONNECTION AGREEMENTS

Since the settlement agreement was consummated in 1980, TU Electric has amended or entered into several new interconnection agreements with various Texas power systems. These agreements are briefly described below:

1. "On May 6, 198[illegible]U Electric and the Texas-New Mexico Power Company signed an "Agreement to General Terms Regarding the TNP One Generating Facility". This agreement is the basis upon which definitive agreements for wheeling and other transactions necessary to integrate TNP's (Texas-New Mexico Power Company) proposed plant in Robertson County into TU Electric's transmission network will be negotiated."

2. Interconnection agreements between TU and Brazos Electric Power Cooperative and TU and West Texas Utilities Company have been amended by TU to conform to the provision in the antitrust license conditions that address restrictions pursuant to interstate power sales.

3. "Brazos Electric Power Cooperative and the Lower Colorado River Authority, with whom TU Electric has maintained contractural relationships, have refused to sign agreements amending interstate clauses in a manner consistent with the License Conditions. TU Electric has therefore waived any and all prior contractural provisions which might be in conflict with License Conditions 3.D.(2)(1)(a) and (b).

4. Discussions have occurred between Rayburn Country Electric Cooperative (Rayburn Country) and TU pursuant to a "master agreement" that would allow Rayburn Country to explore and evaluate power supply options beyond those offered by TU. These options would include power purchases from suppliers other than TU as well as the possibility of Rayburn Country acquiring generating capability of its own. (This master agreement was to be patterned after the TU-TNP master agreement cited above. From the information made available to staff to date, this agreement has not been finalized.)

APPENDIX G

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Central Power and Light Company Public Service Company of Oklahoma Southwestern Electric Power Company West Texas Utilities Company	)	Docket No. EL79-8-002

NOTICE OF FILING OF PETITION FOR MODIFICATION OF COMMISSION ORDERS
(May 6, 1986)

Take notice that on May 1, 1986, Central Power and Light Company ("CPL"), Public Service Company of Oklahoma ("PSO"), Southwestern Electric Power Company ("SWEPCO") and West Texas Utilities Company ("WTU") (collectively, the "CSW Operating Companies") and Houston Lighting & Power Company ("HL&P") petitioned the Commission to modify its earlier orders accepting the offer of settlement filed in this proceeding. In its earlier orders approving the offer of settlement, the Commission, inter alia, ordered the CSW Operating Companies and HLP to construct an asynchronous direct current interconnection between Walker County, Texas and the South Texas Nuclear Project (the "South Interconnection"). Petitioners ask the Commission to modify its earlier orders to (a) require establishment of an asynchronous direct current interconnection (the "East Interconnection") between SWEPCO's Welsh generating station and Texas Utilities Electric Company's ("TUEC") Monticello generating station, both in Titus County, Texas, and the immediate undertaking of actions required therefor, (b) require the CSW Operating Companies, HL&P and TUEC to interconnect their facilities with each other at the East Interconnection, (c) require such ownership of the East Interconnection by the CSW Operating Companies, HL&P and others, and such wheeling, coordination, commingling, sale and exchange of electric power to, from and over the East Interconnection and within the State of Texas as may facilitate its use, and (d) relieve the CSW Operating Companies and HL&P from their obligation to construct and

operate the South Interconnection upon construction of the East Interconnection. The filing Companies expressly reserve the right to withdraw their petition in the event that opposition arises which is not resolved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211, 385.214). All such motions or protests should be filed on or before May 19, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb
Secretary

APPENDIX H

WHOLESALE POWER DEVELOPMENTS

TU Electric supplies many wholesale power customers throughout its vast service area and attributes a significant portion of its annual revenues to wholesale power sales. TU Electric has reported substantial activity involving existing or new wholesale customers since the antitrust settlement in 1980. A number of power entities have contacted TU Electric regarding either sale or purchase of wholesale power:

1. In March of 1986, representatives of the City of Bowie, Texas, a total requirements customer of TU Electric, contacted TU Electric pursuant to power supply alternatives including joint generation and wholesale purchases from other suppliers. TU Electric provided cost estimates to the City, but no further substantive discussions have taken place.

2. In 1983 the City of Electra, Texas, inquired as to TU Electric's willingness to supply wholesale power beginning in 1988. TU Electric informed the City that it was not seeking new loads but it would provide the City with cost estimates for the required service. From the information available no additional requests have been received from the City of Electra.

3. The City of Weatherford, Texas (served by Brazos Electric Power Cooperative) inquired to TU Electric concerning TU Electric's willingness to supply wholesale power and possibly join in construction of future generating facilities. TU Electric supplied cost information to the City and in August of 1983, the City indicated it had no further interest in participating in a future generating facility with TU Electric.

4. "In 1980, the Company was contacted by representatives of Cap Rock [Cap Rock Electric Cooperative, Inc.], a wholesale customer of TUEC, for the purpose of exploring options of purchased power compared to jointly owned generating facilities. Cost information was furnished Cap Rock representatives to aid in their comparative evaluations. Cap Rock elected not to explore joint ownership of generation." (September 2, 1986 TU Electric 9.3)

5. In July of 1986, Rayburn Country Electric Cooperative notified TU Electric of its intent to transfer approximately one megawatt of demand from TU Electric to the Southwestern Electric Power Company. TU Electric indicated it would make the necessary billing corrections and will provide other support necessary to effect the transfer.

6. "In 1984, Rio Grande Cooperative, served by EL Paso Electric, inquired as to the interest and capability of TUEC to serve approximately 20MW of demand. TUEC determined that because of limitations in both bulk supply and transmission facilities such service would impair service quality to existing customers and for this reason declined participation."
(September 2, 1986 TU Electric 9.3)

7. "In April, 1985, TMPA [Texas Municipal Power Agency] inquired as to TUEC interest in supplying it power under long-term purchase agreements or through participation in joint generating facility construction. TMPA's expressed interest was for capacity needed by it in the early to mid-1990's. The Company responded that its current resource plan did not include units to supply the needs expressed by TMPA, noting that TUEC's plans were to supplement its own capacity with firm power purchases to coincide as closely as possible to estimated load growth. No further inquiries have been reserved from TMPA."

8. In April of 1985, Tex-La Electric Cooperative of Texas (Tex-La) initiated discussions with TU Electric pursuant to the possibility of a joint purchase of cogenerated energy. TU Electric indicated that there were no projected benefits to its customers from such an agreement, but that it (TU Electric) would support the necessary delivery to Tex-La of any cogenerated energy--subject to recovery of costs and maintenance of the quality of service to TU Electric customers.

9. "In August, 1986, Central Power & Light and West Texas Utilities made inquiries of TUEC's interest in near term capacity and energy purchases from surplus ERCOT sources. Specific data are being developed by these companies to serve as the basis for further discussion." (September 2, 1986 TU Electric 9.3)

10. "In 1982, El Paso Electric Company planning personnel met with TUEC representatives to discuss long-range possibilities for mutual cooperation." (September 2, 1986 TU Electric 9.3)

11. In 1985 Southwestern Public Service Company proposed the sale of capacity and energy to TU Electric. TU Electric is continuing to evaluate this proposal as its resource plan is currently being evaluated and updated.

12. "In June, 1986, CSW [Central & Southwest Co.] inquired as to the interest of TUEC in ownership of capacity that would be provided by a proposed expansion of the capability of the North DC Tie. TUEC will not at this time participate in the expansion of the North Tie." (September 2, 1986 TU Electric 9.3)

The following requests or expressions of interest were excerpted from TU Electric's September 2, 1987 updated response to Regulatory Guide 9.3:

13. "In 1983, Cajun Electric Power Cooperative, Inc. of Baton Rouge, Louisiana notified TU Electric that it was seeking partners for ownership of up to 300 megawatts of expected excess capacity from a 540 megawatt lignite plant it then had under construction. Cajun cited reduced load growth as the reason for this expected excess. Cajun also asked if TU Electric would be interested in Cajun's participation, either as joint owner or power purchaser, in future generating units which TU Electric had planned for the early 1990's.

TU Electric responded that it too was experiencing load growth reduction, which, along with a fuel conversion program to reduce dependency on natural gas in favor of lignite and nuclear fueled generation, had resulted in adequate reserve margins for its system. Based on its resource plans TU Electric noted that it did not expect the arrangements proposed could be beneficial."

14. "In 1985, KG&E made informal contact with TU Electric to determine its possible interest in purchasing surplus capacity over the next several years. TU Electric responded that its 1985 needs were met but that it would consider any KG&E proposal for later years based on the TU Electric Resource Plan, available alternatives and the feasibility of having such power wheeled to TU Electric loads. No proposal was received nor has further contact been made by KG&E on this subject."

15. "TU Electric was verbally contacted in 1985 by a representative of the municipal utility of the City of Lubbock, Texas relative to interest in joint participation in a future power plant. The City was apparently considering building a plant at a planned municipal water supply reservoir. The representative indicated he would contact TU Electric again in early 1986. Such contact was not made nor has any other contact since been made by Lubbock relative to this matter. We assume Lubbock's interests or plans have changed."

16. "In May of 1985, CPSB offered to sell TU Electric surplus capacity for the summer months of 1985. TU Electric responded that it had sufficient capacity available to meet its expected summer loads and reserve requirements. In the fall of 1985, CPSB inquired of TU Electric's interest in purchasing reserve capacity for the summer of 1986. CPSB, after developing a more aggressive load forecast for CPSB 1986 load, decided not to pursue sales further. At the same time, TU Electric's 1986 needs had been otherwise met."

17. "In 1985 and 1986, PNM initiated contacts with TU Electric, as well as with many other utilities, to seek support for its proposed Dineh Project. Support would be in the form of a binding commitment to purchase power and energy from the project. This project, as conceived by PNM, would consist of a four unit coal-fired generating plant with aggregate capacity of some 2000 megawatts. The plant would be sited in New Mexico on Navajo Indian reservation land. Under the PNM concept, the plant would be linked to a number of Southwestern states by new high voltage transmission lines to be constructed for this purpose. PNM, through a wholly-owned subsidiary, and in partnership with others, would own the plant and market power from the units. PNM's stated intent was to operate the units in a manner that would not subject sale of power and energy to state rate regulation. PNM made it clear that its decision to proceed with the project was subject to prior purchase commitments for the capacity and to its meeting of other PNM objectives.

TU Electric's consideration of this proposal took into account the uncertainty attendant to PNM's (partnership's) unilateral decision of whether to carry the project forward. Also considered were the uncertainty of completion if begun and the cost, which PNM would not guarantee, if completed. The project, if begun, is subject to substantial uncertainty in numerous areas including environmental and other regulatory issues. Under these circumstances, TU Electric concluded that commitment to this project was an unacceptable option for its resource plan and responded to PNM accordingly."

18. "In June, 1986, a power marketing team from Southern Services Company, a subsidiary of the Southern Company, called on TU Electric representatives with the information that the Southern Company operating subsidiaries expected to have power and energy available for sale in the 1990's and to explore TU Electric's interest in purchase of such power and energy. The Southern Services Company representatives were aware that consideration of such sale was dependent on resolution of the East HVDC Tie. TU Electric responded that any future interest it might have would be dependent on a number of factors, including not only the East HVDC Tie but on its own needs at the time and on the relative costs of options available to meet those needs. Representatives of Southern Services Company have made no further contacts with TU Electric to discuss the possibility of their having excess capacity in the 1990's."

19. "The only other specific items which might be relevant were purchase by TU Electric of 400 megawatts of short-term reserve capacity, excluding cogeneration purchases, which fully covered requirements for the 1985 peak load period. The 400 megawatts consisted of 200 megawatts each from Texas Municipal Power Agency (TMPA) and the Lower Colorado River Authority (LCRA). TMPA later offered to sell reserve capacity for the 1986 peak period and Houston Lighting & Power Company (HL&P) offered to sell reserve capacity for the 1986 and 1987 peak periods. However, such peaking reserve requirements for these years were otherwise met and the offers were declined."

APPENDIX I

38 FERC ¶ 61,050
(Jan. 27, 1987)

In Reply Refer to:
Docket Nos. ER82-545-000,
ER82-546-000,
ER83-610-000,
ER83-611-000,
ER83-635-000,
and ER83-657-000

Reid & Priest
Attention: Mr. Floyd L. Norton, IV
Attorney for Texas Utilities
Electric Company
1111 19th Street N.W.
Washington, D.C. 20036

JAN 27 1987

Dear Mr. Norton:

On December 23, 1985, as supplemented on December 31, 1985, January 24, 1986, and April 7, 1986, TUEC filed an offer of settlement in an attempt to resolve all issues in the above-referenced dockets. However, various comments and briefs regarding the settlement were subsequently submitted and, on June 6, 1986, the presiding administrative law judge certified the matter to the Commission as a contested offer of settlement. Subsequently, on November 7, 1986, the settlement was further supplemented to resolve the remaining issues. On November 26, 1986, staff submitted comments in support of the settlement, as ultimately supplemented. No other comments to the offer of settlement, as ultimately supplemented, were received. The settlement, as ultimately supplemented, is deemed to be an uncontested settlement.

The subject settlement is in the public interest and is hereby approved. The revised proposed order submitted with the supplement on November 7, 1986, is hereby made a part of this order and is included as Enclosure A hereto.

Section 2 of Enclosure A specifies rates for the ERCOT tariffs and requires filings to change the rates. Within thirty (30) days of the date of this order, submit revised settlement tariffs for ERCOT service reflecting such specified rates. Settlement rate schedule designations for the non-ERCOT tariffs are shown on Enclosure B.

Within fifteen (15) days after making the refunds required under the settlement as specified on Enclosure A hereto, the companies shall file with this Commission compliance reports showing monthly billing determinants, revenue receipt dates, and revenues under the prior, present, and settlement rates, the monthly revenue refund, and the monthly interest computed thereon, together with a summary of such information for the entire refund period. The companies shall furnish copies of such reports to the affected wholesale customers and to each regulatory commission within whose jurisdiction the wholesale customer's end

3.2

sell electric energy at retail.

The companies are hereby directed to file complete service agreements for each customer taking service under the settlement tariffs.

This letter terminates the above-referenced dockets. New subdockets will be assigned in ER82-545 upon receipt of the compliance refund reports and revised rate schedules.

By direction of the Commission.

Secretary

Enclosures A and B

cc: To All Parties

Texas Public Utilities Commission
7800 Shoal Creek Boulevard
Suite 450 N.
Austin, Texas 78757

Louisiana Public Service Commission
Suite 1630
One American Plaza
Baton Rouge, Louisiana 70825

Oklahoma Commerce Commission
500 Jim Thorpe Office Building
Oklahoma City, Oklahoma 73105

Arkansas Public Service Commission
1000 Center Building, box C-400
1000 Center Street
Little Rock, Arkansas 72203

OEPR
Sammon, J.:met
12/30/86

bcc: Registry/RIMS, Dockets, Interoffice Files, DPI, SEC, ALJ, OGC (1)(2), Vault, DEPI Director, Murdock, Shulman, Milbourn, Orecchio, Sammon, Tindall, Der, Forman, Bublitz, Elliot, Harlan ERF(2), WERI(1)(2)

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Public Service Company of Oklahoma, et al.	) Docket Nos.	ER82-545-000,
	)	ER82-546-000,
	)	ER83-610-000,
	)	ER83-611-000,
	)	ER83-635-000,
	) and	ER83-657-000

ORDER APPROVING SETTLEMENT

On February 9, 1979, the operating subsidiaries of Central and South West Corporation ("CSW Operating Companies" or "CSW") jointly filed with the Federal Energy Regulatory Commission ("Commission" or "FERC") an application seeking the interconnection of facilities and the provision of transmission services pursuant to Sections 202, 210, 211 and 212 of the Federal Power Act ("Act"), as amended by the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. §§824a, 824i, 824j and 824k. The application was docketed as Docket No. EL79-8. By their application, the CSW Operating Companies sought from the Commission orders which would require interconnection of the Electric Reliability Council of Texas ("ERCOT") and the Southwest Power Pool ("SWPP"). The CSW Operating Companies in ERCOT are Central Power and Light Company ("CPL") and West Texas Utilities Company ("WTU"). The CSW Operating Companies in SWPP are Public

Service Company of Oklahoma ("PSO") and Southwestern Electric Power Company ("SWEPCO").

On June 27, 1980, in an attempt to settle, among other things, Docket No. EL79-8 and a related proceeding before the Nuclear Regulatory Commission, the CSW Operating Companies filed an amended application seeking approval of two asynchronous direct current interconnections between electric utilities in ERCOT and SWPP. On July 28, 1980, the CSW Operating Companies, Houston Lighting & Power Company ("HL&P") and the operating subsidiaries of Texas Utilities Company ("TUC") submitted an Offer of Settlement in Docket No. EL79-8 which would effectuate the proposal set forth in the amended application. The Offer of Settlement was supplemented on two occasions. The Offer first was supplemented by agreement dated September 11, 1980, executed by the Commission Staff, the CSW Operating Companies, HL&P, and the operating subsidiaries of TUC, and a Supplemental Offer of Settlement was filed on October 8, 1980. Then on June 22, 1981, a Second Supplemental Offer of Settlement was filed, advising the Commission that an agreement had been executed by CSW and the U.S. Department of Justice ("DOJ"), under which DOJ agreed not to contest the Offer of Settlement as supplemented by the Supplemental Offer of Settlement and as amended by the Second Supplemental Offer of Settlement. The Offer of Settlement, as supplemented, was certi-

fied to the Commission as an uncontested Offer of Settlement on July 10, 1981.

Pursuant to the authority conferred by Sections 210, 211 and 212 of the Act, the Commission issued an "Order Requiring Interconnection and Wheeling, and Approving Settlement" in Docket Nos. EL79-8 and E-9558, on October 28, 1981, as corrected by the Errata Notice issued on November 5, 1981, 17 FERC ¶61,078, as modified by the "Order on Rehearing" issued January 29, 1982, 18 FERC ¶61,000, incorporating by reference the form of Order Approving Settlement (the "form of Order Approving Settlement") submitted with the Second Supplemental Offer of Settlement in that proceeding (collectively referred to herein as "the Orders"), requiring the construction of two high voltage direct-current interconnections (the "HVDC Interconnections") between ERCOT and SWPP.

To provide transmission service to, from and over the HVDC Interconnections, the CSW Operating Companies, HL&P and the operating utilities which constituted what is now Texas Utilities Electric Company ("TUEC") were ordered to file tariffs that would comply with the provisions of the form of Order Approving Settlement which the Commission incorporated by reference in its Order on Rehearing. In addition, CPL and WTU were required to file tariffs that would comply with certain provisions of the form of Order Approving Settlement for transmission service within ERCOT

available to utilities with loads less than 1500 MW. PSO and SWEPCO were also required to file tariffs that would comply with certain other provisions of the form of Order Approving Settlement for transmission service within SWPP available to utilities with loads less than 1500 MW.

These consolidated proceedings were initiated to consider the tariffs filed by the CSW Operating Companies, HL&P and TUEC in compliance with the orders in Docket No. EL79-8.[1] Interventions were granted in these proceedings to the following parties: Brazos Electric Power Cooperative, Mid-Texas Electric Cooperative, Inc., and The Texas Cooperatives (collectively, "WCG"); Municipal Electric Systems of Oklahoma; South Texas Electric Cooperative, Inc.; Medina Electric Cooperative, Inc.; North-

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[1] Docket Nos. ER82-545-000 and ER82-546-000 concern the tariffs filed by PSO and SWEPCO for transmission within SWPP and by CPL and WTU for transmission service within ERCOT. "Order Accepting For Filing and Suspending Tariffs, Granting in Part and Denying in Part Motion for Summary Disposition, Granting Interventions, Consolidating Dockets and Establishing Procedures," 20 FERC ¶61,082 (July 23, 1982). Docket Nos. ER83-610-000 and ER83-611-000 concern the tariffs for transmission service to be provided by the CSW Operating Companies to, from and over the HVDC Interconnections. "Order Accepting For Filing and Suspending Tariffs, Noting Interventions, Summarily Disposing of Certain Issues, Consolidating Dockets and Establishing Procedures," 24 FERC ¶61,266 (August 30, 1983). Docket Nos. ER83-635-000 and ER83-657-000 concern the tariffs for transmission service to, from and over the HVDC Interconnections filed by TUEC and HL&P, respectively. "Order Accepting For Filing and Suspending Tariffs, Granting Interventions, Summarily Disposing of Issue, Consolidating Dockets, and Establishing Procedures," 24 FERC ¶61,291 (September 16, 1983).

east Texas Electric Cooperative, Inc. ("NTEC"); Tex-La Electric Cooperative of Texas, Inc.; Rayburn Country Electric Cooperative, Inc. ("Rayburn Country"); City of Lafayette, Louisiana; Public Utilities Board of Brownsville, Texas ("Brownsville"); Valley View Energy Corporation; Oklahoma Corporation Commission; and the Public Utility Commission of Texas ("PUCT"). Prehearing and status conferences were conducted before the Presiding Administrative Law Judge on August 18, 1982; October 20, 1983; March 5 and 26, June 4 and November 13, 1984; and July 9, 1985. Hearings were conducted before the Presiding Judge in May 1985, but were adjourned to permit completion of settlement discussions. Extensive settlement negotiations among the parties culminated in the joint execution of an Offer of Settlement by all remaining parties to the proceeding (except Brownsville and PUCT) and the Commission Staff.

On December 23, 1985, certain parties to these proceedings and the Staff of the Commission jointly filed an Offer of Settlement, which would resolve the matters at issue.[2] The following parties withdrew from the proceeding: Municipal Electric Systems of Oklahoma, City of Lafayette, Louisiana and Rayburn

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2 Two of the parties, South Texas Electric Cooperative and Medina Electric Cooperative ("STEC/MEC"), reserved the right to argue against the rolling-in of AC and DC costs in any future proceeding involving the CPL and WTU intra-ERCOT transmission service tariffs (Appendices 3 and 4).

Country. On January 17, 1986, the Staff filed comments in support of the Offer of Settlement and Brownsville filed comments in opposition to the Offer of Settlement. On February 20, 1986, certain parties filed a Motion for Certification of Partial Settlement. A conference was held on March 25, 1986, to discuss the status of the proceeding. At that conference, Brownsville's comments in opposition to the Offer of Settlement were declared withdrawn, as were the replies to those comments. Pursuant to the Presiding Judge's directive, a revised proposed Order Approving Settlement was filed on April 7, 1986, and a further revised order was filed on May 12, 1986. On May 1, 1986, Brownsville filed a brief on three contested legal issues. Reply briefs were filed by other parties on May 30, 1986. On June 6, 1986, the Presiding Judge certified the Offer of Settlement to the Commission as a contested Offer of Settlement not involving any genuine issue of material fact, pursuant to Rule 602(h)(2) (ii). The Offer of Settlement, as certified, contains a Memorandum of Agreement among the settling parties, certain settlement tariffs, and a proposed Order Approving Settlement, which embodies the agreement of these parties.[3] On November 6, 1986, Brownsville

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[3] In the course of negotiating the Offer of Settlement CPL and WTU entered into separate bilateral agreements with STEC/MEC and WCG, respectively, and SWEPCO and PSO entered into a bilateral agreement with NTEC. Copies of such agreements were filed with the Office of the Secretary on April 7, 1986.

executed a Supplement to Offer of Settlement as well as the Memorandum of Agreement, thereby joining the pending Offer of Settlement. The Supplement to Offer of Settlement, together with a revised draft Order Approving Settlement, was filed with the Commission on November 7, 1986.[4] Therefore, the Offer of Settlement is now uncontested. The parties to the settlement indicate that the settlement must be approved by the Commission as submitted in order to become effective.

The Commission has reviewed the Offer of Settlement submitted by the parties and concludes that the settlement is fair, reasonable and in the public interest.

The Commission finds:

(1) The Commission has jurisdiction to issue this Order under Sections 210, 211 and 212 of the Federal Power Act, by virtue of prior Orders issued in Docket No. EL79-8. By agreement in Docket No. EL79-8, the rates approved herein are determined in accordance with the procedures of Sections 205 and 206 of the Act.

(2) The Offer of Settlement filed in this proceeding, the Memorandum of Agreement and the Tariffs attached to the Offer

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4 The Offer of Settlement filed December 23, 1985, as supplemented by the Supplement to Offer of Settlement filed November 7, 1986, is hereinafter referred to as the Offer of Settlement.

of Settlement as Appendices 1-8 are fair, reasonable and in the public interest.

The Commission orders:

(1) The Offer of Settlement and the settlement tariffs as modified in accordance with this Order are approved, and accepted for filing to become effective as of the date on which this order becomes final and is no longer subject to judicial review.

(2) In approving the settlement tariffs, the Commission approves rates derived from cost of service and system megawatt-mile data provided to the Staff and evaluated in the Staff comments on the Offer of Settlement. Such rates are $54.23 per MW-mile for CPL, $76.98 per MW-mile for WTU, $95.65 per MW-mile for HL&P and $45.50 per MW-mile for TUEC. Within 30 days of the issuance of this Order, CPL, WTU, HL&P and TUEC shall revise their respective settlement tariffs to set forth the foregoing rates. Before CPL, WTU, HL&P or TUEC may use a different rate under its settlement tariff, it must file such rate as a change in rate.

(3) No refunds to the parties to the settlement for charges billed or collected under the provisions of the tariffs originally filed in these proceedings are required for the period covering service rendered prior to the date of this order, and for such period amounts billed or collected consistent with the

originally filed tariffs shall no longer be subject to refund. Within 90 days of the effective date of the Offer of Settlement and the settlement tariffs revised pursuant to the preceding paragraph, TUEC, HL&P, CPL, WTU, PSO and SWEPCO shall make refunds of those amounts collected under the originally filed tariffs in excess of the amounts, if any, which would have been collected under the settlement tariffs, for service rendered between the date of this order and said effective date, together with interest thereon calculated in accordance with Section 35.19a of the Commission's Regulations.

(4) The tariffs filed with the Offer of Settlement, as modified pursuant to this Order, conform in every material respect to the Commission's Orders in Docket No. EL79-8, including the form of Order Approving Settlement incorporated by reference in those Orders, and the Orders entered in Docket No. EL79-8 remain unchanged and in full force and effect.

(5)(a) Approval of this settlement constitutes a resolution of all issues in this proceeding, except that STEC/MEC shall not be foreclosed from arguing, or the Commission from deciding, against the rolling-in of AC and DC costs in any future proceeding involving the CPL and WTU intra-ERCOT transmission service tariffs. Except as provided in the preceding sentence, the parties to the Offer of Settlement may not (i) contest any provision of the Commission's Orders in Docket No. EL79-8, except

as expressly provided for in this paragraph; (ii) contest any provision of TUEC's, HL&P's or CSW's tariffs filed in settlement of Docket Nos. ER82-545-000, et al.; or (iii) contest the Offer of Settlement and proposed Order Approving Settlement filed therein. (b) In the event that TUEC, HL&P or CSW proposes an increase in the rate provided for in such tariffs, the party or parties affected shall be free to contest such rate increase but no party to the Offer of Settlement shall be entitled to contest any provision of such tariff unless the filing party seeks a material change to such provision. (c) TUEC, HL&P and CSW shall not seek to change any provision of the tariffs provided for in this settlement if to do so would in any manner be inconsistent with the provisions of the Commission's Orders in Docket No. EL79-8 including, but not limited to, paragraph 8(d) of the form of Order Approving Settlement, except that CSW shall be free to seek modifications of paragraph 8(d) of the form of Order Approving Settlement in Docket No. EL79-8 with regard to the rate methodology prescribed for the WTU and CPL intra-ERCOT tariffs, and to file tariffs embodying rate methodologies other than those currently prescribed in said paragraph 8(d) for the WTU and CPL intra-ERCOT tariffs and except further that CSW shall be free to seek modifications of paragraph 8(e) of the form of Order Approving Settlement in Docket No. EL79-8 and to file tariffs not consistent with the provisions of said paragraph 8(e) for the PSO

and SWEPCO intra-SWPP tariffs. (d) TUEC, HL&P, and CSW, without mutual consent, shall not seek to change the methodology for determining transmission service charges for the services rendered under the TUEC, HL&P and CPL-WTU settlement tariffs for transmission service to, from and over the HVDC interconnections from the positive difference megawatt-mile methodology as presently practiced in ERCOT to any other methodology permitted by the Commission's Orders in Docket No. EL79-8 for a period of ten (10) years. (e) Notwithstanding the provisions of this paragraph, TUEC, HL&P or CSW may at any time, with mutual consent, seek a modification to the Commission Orders in Docket No. EL79-8 or the tariffs in Docket Nos. ER82-545-000, et al., and no party to the Offer of Settlement, other than Staff, may oppose such modification, so long as such modification does not adversely affect any of the rights that such party may have under the Orders issued on October 28, 1981, November 5, 1981, and January 29, 1982, incorporating by reference the form of Order Approving Settlement, in Docket No. EL79-8 or the Offer of Settlement and proposed Order Approving Settlement in this proceeding, and such party shall limit its opposition, if any, to such proposed modification and shall not seek to change, modify or relitigate any other provision of the Orders in Docket No. EL79-8 or the Offer of Settlement and proposed Order Approving Settlement in this proceeding.

(6) Any party to this proceeding as well as any entity receiving service under the CPL or WTU tariffs submitted with the Offer of Settlement for transmission service within ERCOT or pursuant to any rate schedule, tariff or agreement entered into as a result of commitments relating to or growing out of settlements made in Docket No. EL79-8 or in this proceeding, and filed by CPL or WTU with the FERC providing for transmission service originating and terminating within ERCOT, shall be obligated to pay such additional charges as may be lawfully due any other party to this proceeding whose facilities are impacted as a result of such service; and any such transmission service charges shall not be unlawful by virtue of the fact that such charges are imposed by entities which are not subject to plenary jurisdiction of the FERC and which have not filed tariffs or rate schedules with the FERC applicable to charges for service originating and terminating within ERCOT.

(7) This Order does not constitute approval of, or precedent regarding, any principle or issue in this proceeding, except that (a) the tariffs required to be filed pursuant to the Orders entered in Docket No. EL79-8 are and will continue to be governed by such Orders, including paragraph 8 of the form of Order Approving Settlement, incorporated by reference in those Orders; (b) the tariffs filed with the Offer of Settlement are consistent with the Commission's Orders in Docket No. EL79-8,

including the form of Order Approving Settlement; and (c) this Order shall, in any future proceeding instituted by reason of the Orders in Docket No. EL79-8 or this Order, constitute approval and precedent with regard to the principles set forth and issues determined in such Orders (except as otherwise stated herein).

Enclosure B

Settlement Designations

Date Filed: December 23, 1985

Designations	Descriptions
Docket No. ER83-610-000	
Public Service Company of Oklahoma	
(1) FERC Electric Tariff First Revised Volume No. 2, Original Sheet Nos. 1 through 21 (Supersedes FERC Electric Tariff Original Volume No. 2)	SPP Interpool transmission tariff, dated October 31, 1985
Southwestern Electric Power Company	
(2) FERC Electric Tariff, First Revised Volume No. 2, Original Sheet Nos. 1 through 21 (Supersedes FERC Electric Tariff, Original Volume No.	SPP Interpool transmission Service Tariff, dated October 31, 1985
Docket No. ER82-545-000	
Public Service Company of Oklahoma	
(3) FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 1 through 15 (Supersedes FERC Electric Tariff, Original Volume No. 1)	Intra-SPP transmission Service Tariff, dated October 31, 1985
Southwestern Electric Power Company	
(4) FERC Electric Tariff, First Revised Volume No. 1, Original Sheet Nos. 1 through 15 (Supersedes FERC Electric Tariff, Original Volume No. 1)	Intra-SPP transmission Service Tariff, dated October 31, 1985