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April 13, 1994

BY HAND DELIVERY

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Re: NRC Docket Nos. STN 50-528,  
STN 50-529 and STN 50-530 --  
Arizona Public Service Co., et al.

Dear Messrs. Oliu and Gody:

Enclosed for filing, in accordance with the Commission's notice published March 14, 1994 (59 Fed. Reg. 11813), is the original, for Mr. Oliu, and a copy, for Mr. Gody, of the Petition for Leave to Intervene and Comments of Southwestern Public Service Company on Proposed Transfer of Control and Antitrust Issues in the above-referenced docket. We have enclosed an additional copy of the foregoing pleading, which we request that you file stamp and return to our messenger for delivery to us as proof of filing. Finally, we have enclosed a notice of entry of appearance on behalf of counsel for Southwestern.

Thank you for your attention to this filing.

Very truly yours,

  
Barry S. Spector

Enclosures  
cc (w/enc.): Service List

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per: 2998  
Bill Lamb

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
ARIZONA PUBLIC SERVICE CO.	)	Docket Nos. STN 50-528
	)	STN 50-529
	)	STN 50-530
Palo Verde Nuclear Generating	)	
Station, Units 1, 2, and 3	)	Transfer of Control of
Operating Licenses NPF-41 NPF-51	)	Ownership of License;
and NPF-74	)	Antitrust Issues
	)	
	)	

PETITION FOR LEAVE TO INTERVENE AND  
COMMENTS OF SOUTHWESTERN PUBLIC SERVICE COMPANY  
ON PROPOSED TRANSFER OF CONTROL AND ANTITRUST ISSUES

I. INTRODUCTION AND SUMMARY

Southwestern Public Service Company ("Southwestern") submits this pleading in response to the Nuclear Regulatory Commission's ("NRC" or "Commission") notice, published in the Federal Register on March 14, 1994, seeking (1) comments on the proposed transfer of control of El Paso Electric Company's ("EPEC") interests in the Palo Verde Nuclear Generating Station to Central and Southwest Corporation ("CSW") and (2) "comments or information relating to antitrust issues believed to be raised by this transfer request." 59 Fed. Reg. 11813.

Southwestern is vitally affected by the competitive consequences of the proposed transfer of control. The combination of CSW and EPEC, including the combination of their nuclear plants and transmission facilities, and the transfers of power, including nuclear power, between and among EPEC and the operating

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companies of CSW, will significantly hamper Southwestern in competing with CSW and EPEC. As discussed in detail below, the merger and transfer of control will maintain and exacerbate a situation inconsistent with the antitrust laws regarding competition throughout the Southwest and for sales to Mexico.

Because CSW and EPEC are hundreds of miles from each other, they plan to implement their merger by transferring power and energy, including Palo Verde power and energy, across Southwestern's low-cost transmission system. In so doing, CSW and EPEC will tie up all available transmission capacity so that others, particularly Southwestern, can no longer compete with them. At the same time, following their merger, CSW and EPEC will largely surround Southwestern and control all of the viable transmission paths for the sale of Southwestern's bulk power in the Southwest. CSW and EPEC also will control virtually all of the transmission paths between the U.S. and Mexico. Southwestern is an actual and potential competitor to CSW and EPEC for sales throughout the Southwest and to Mexico. But, CSW and EPEC's enhanced control over transmission and substantial market power following the merger, as well as their ability to exercise it, as they have done in the past, will preclude Southwestern's competition.

The Atomic Energy Act ("Act") directs the Commission to investigate the competitive aspects of its licensing actions, including obtaining the advice of the Attorney General regarding antitrust issues, and to remedy "a situation inconsistent with

the antitrust laws." At this stage, CSW and EPEC have not even submitted to the Commission the antitrust information required by the NRC's regulations regarding transfers of licenses. The Commission therefore should dismiss or hold in abeyance the application, pending the receipt of that information. Further, the Commission should forward the transfer application, and any supplemental antitrust information it receives, to the Attorney General for her advice, as required by the Act. The Commission should take no further action pending receipt and publication of that advice.

In no event should the Commission approve the transfer based on the bare submission currently before it, as the application requests. As the Commission recognizes, the Federal Energy Regulatory Commission ("FERC") also is investigating the proposed acquisition. Two applications are pending at the FERC. In the first, filed in November 1993, CSW and EPEC have asked the FERC to compel Southwestern to provide firm transmission capacity to them for the indefinite future so that they can integrate their distant systems. <sup>1/</sup> Because this will tie up Southwestern's transmission capacity and obstruct Southwestern's ability to compete, 19 parties, including the Public Utilities Commission of Texas, the New Mexico Attorney General, and customers of CSW, EPEC, and Southwestern, have protested or otherwise raised concerns with the application. CSW and EPEC also have sought the Commission's approval of their merger, through an application

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<sup>1/</sup> See Appendix V to EPEC's Application to this Commission.

filed in January, 1994. <sup>2/</sup> Twenty-nine parties, again including numerous regulatory authorities, state attorneys general, and customers of CSW, EPEC and Southwestern, have intervened in that proceeding, raising a host of issues including the anticompetitive lessening of competition the merger would produce.

The Commission should take no final action until, at a minimum, the FERC investigation is complete. At that time, the Commission may utilize the FERC's findings, if appropriate, as supplemented by its own findings, to address the antitrust issues under the Act. Importantly, the Commission may not abdicate its own independent antitrust responsibilities under the Act; it must take its own appropriate remedial action regarding the transfer of control. Therefore, following receipt and publication of the Attorney General's advice and any findings of the FERC, the NRC should solicit further comments regarding the license transfer and adopt any necessary conditions, consistent with the NRC's antitrust responsibilities.

In their effort to stampede the transfer application through the Commission, CSW and EPEC have submitted to the NRC their application and related evidentiary submissions to the FERC. See Application at III-11, n. 22. In light of this, Southwestern is submitting to the Commission its response to the FERC application, in relevant part. Specifically, Southwestern is submitting its preliminary evidentiary affidavits, submitted to the FERC in opposition to CSW/EPEC's application, which detail

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<sup>2/</sup> See Appendix IV to EPEC's Application to this Commission.

the significant and substantial issues in dispute regarding the competitive situation. Southwestern reserves the right to supplement its submission to the NRC, as the FERC proceedings progress and after they are completed.

Southwestern requests the Commission to impose remedial antitrust conditions, if the transfer of control is approved, which will ensure its ability to compete on fair and equal terms with EPEC and CSW after the merger. The requested conditions are set forth in Section V, infra. These remedies are the minimum necessary to fix the present anticompetitive situation and the situation which will prevail following the merger.

The persons designated pursuant to 10 C.F.R. § 2.708(e) to receive service of pleadings, orders, and other documents in connection with this proceeding on behalf of Southwestern are:

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Vice President, Rates  
and Regulation  
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## II. SOUTHWESTERN'S INTEREST IN THE PROCEEDING.

Section 189(a) of the Act provides that the Commission "shall admit" as a party to a proceeding "any person whose interest may be affected by the proceeding." Act, § 189(a), 42 U.S.C. § 2239(a). Section 189(a) expressly applies to proceedings regarding an "application to transfer control." Id. The Commission's regulations further provide that "[a]ny person whose interest may be affected by a proceeding and who desires to

participate as a party shall file a written petition for leave to intervene." 10 C.F.R. § 2.714(a)(1).

Southwestern clearly has an interest in this proceeding justifying its intervention and full participation. Southwestern is interconnected with both EPEC and two of CSW's operating companies, and the merger, as proposed, is predicated on CSW and EPEC integrating their operations across Southwestern's transmission system. There will be a substantial effect on Southwestern of any order in this proceeding since CSW and EPEC's power and energy, including Palo Verde power, will be flowing across Southwestern's system if the merger and transfer of control are approved, as proposed. See 10 C.F.R. § 2.714(d)(1)(iii).

Moreover, the merger and transfer of control will enhance the market power of CSW and EPEC and their abilities to control Southwestern's off-system sales. CSW and EPEC will largely surround Southwestern and control the outlets for its power. Southwestern's evidence regarding the competitive situation is crucial to the Commission's developing a sound record and exercising its antitrust responsibilities under the Act. See 10 C.F.R. § 2.714(d)(1)(i).

Southwestern competes extensively with CSW and EPEC for sales to wholesale customers in the Southwest and Mexico. With its low-cost, largely coal-based generation, Southwestern is the region's most significant competitive force. Thirty-two percent of Southwestern's sales are to wholesale customers, many beyond the borders of its traditional service area. (See attached

affidavit of David T. Hudson, at 2.) Without conditions, the merger and transfer of control would severely restrict Southwestern's access to markets in which it can compete, warranting Southwestern's intervention to protect its interests. See 10 C.F.R. § 2.714(d)(1)(ii).

III. THE ACT REQUIRES THE COMMISSION TO OBTAIN ANTITRUST ADVICE FROM THE ATTORNEY GENERAL REGARDING ANY LICENSE TRANSFER AND TO REMEDY "A SITUATION INCONSISTENT WITH THE ANTITRUST LAWS."

A. The Act Requires The Commission To Obtain The Attorney General's Advice Regarding Antitrust Issues.

Section 1 of the Act declares that "the development, use, and control of atomic energy shall be directed so as to . . . strengthen free competition in private enterprise." Act, § 1(b), 42 U.S.C. § 2011(b). In furtherance of this goal, section 105 of the Act provides that the Commission "shall promptly transmit to the Attorney General a copy of any license application," so that the Attorney General can "render such advice to the Commission as he determines to be appropriate in regard to the [antitrust] finding to be made" by the Commission under section 105. Act, § 105(c)(1), 42 U.S.C. § 2135(c)(1) (emphasis added). The Commission must give "due consideration" to the Attorney General's advice and any other evidence provided to it, and "make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws." Act, § 105(c)(5), 42 U.S.C. § 2135(c)(5).

Under the terms of the Act, the only exception to the foregoing procedures is in the case of an application "for a



license to operate a . . . production facility for which a construction permit was issued," since, in that case, the Applicant would have already undergone an antitrust examination by the Commission. Act, § 105(c)(2), 42 U.S.C. § 2135(c)(2). In that event, the Commission proceeds with its antitrust review only if "the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission . . . in connection with the construction permit for the facility." Id.

This single exception under the Act, however, is inapplicable here. CSW was not part of any previous antitrust examinations regarding the Palo Verde plants. Only EPEC has undergone such review. As a transferee of control of the Palo Verde facilities, CSW stands in the same position as would an added co-owner of a facility, under which circumstances the Commission has plainly stated that, "[w]ithout exalting form over substance, it is clear that these applications are within the scope of the phrase 'any license application' for antitrust review purposes within the meaning of § 105(c)(1)." Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), 7 NRC 583, 588 (1978).

To construe the statute otherwise would permit a utility with no antitrust problems to undergo an antitrust review and obtain an unconditioned construction permit, and then sell an ownership interest to another monopolizing utility. . . . Such an unequal treatment of applicants, insulating from prelicensing antitrust review those who came

in later by way of amendments . . . , would subvert the Congressional intent and purpose of § 105(c)."

Id. (emphasis added). See also South Carolina Elec. & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), 11 NRC 817, 830-31 (1980), where the Commission noted that "the addition of a co-owner as a co-licensee was in effect an initial application of the co-owner and as such required formal antitrust consideration." Explaining its Detroit Edison decision, the Commission stated: "That decision was based on the necessity for an in-depth review . . . of all applicants, lest any applicant escape statutory antitrust review." Id. at 831 (emphasis added).

Southwestern submits that, under the Act, the Commission must transmit any transfer application to the Attorney General for antitrust review, and requests the Commission to do so. Absent transmittal of transfer applications to the Attorney General, transferees would "escape statutory review."

Alternatively, the Commission should consider the Palo Verde transfer application by definition to constitute a "significant change in the licensee's activities or proposed activities [which] have occurred subsequent to the previous review by the Attorney General and the Commission" under section 105(c)(2). <sup>3/</sup> The change by definition is significant because the transferee, CSW, has never undergone any antitrust examina-

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<sup>3/</sup> The Commission's notice states that the Director of the Office of Nuclear Reactor Regulation will issue a finding whether significant changes in the licensee's activities have occurred since the completion of the previous antitrust review. 59 Fed. Reg. 11,813 (1994).

tion regarding the facility. See South Carolina Elec. & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), 11 NRC 817, 830-31, 833 (1980). 4/

The exception to statutory antitrust review -- where that review has already occurred during the construction permit phase -- is and should be inapplicable in the case of a transfer of control. As the Commission has stated, although not explicitly referred to in the statute, the implication is that an antitrust review should be initiated "where an application for transfer of control of a license has been made." Houston Lighting & Power Co. (South Texas Project, Unit Nos. 1 and 2), 5 NRC 1303, 1318 (1977). See also Procedures for Meeting NRC Antitrust Responsibilities, NUREG-0970, § 4.2:

If a subsequent applicant is named or identified after a construction permit or operating license has been issued, the permit or license, as the case may be, must be amended to include the additional owner. When reviewing an application for an amendment to a license . . . , the Commission follows the same considerations that govern the issuance of initial licenses. . . . Each of the prospective joint owners, both the initial and subsequent owners, must undergo an antitrust review . . . "

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4/ The Commission has held that, in the context of a new co-owner of a facility, there are three tests for determining the presence of a significant change: "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 likely warrant some Commission remedy." South Carolina Elec. & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), 11 NRC 817, 824 (1980). As shown in Section IV, infra., in these circumstances, all of these tests are met.

(Emphasis added.)

In either event, whether full antitrust review is mandatory or whether review depends on a "significant changes" determination, the Commission should promptly transmit the application to the Attorney General.

B. The Commission Should Dismiss Or Hold In Abeyance The Application Because It Does Not Include Required Antitrust Information; If Not Dismissed, The Application Should Be Promptly Transmitted To The Attorney General For Antitrust Advice.

1. The Commission's Regulations Require the Submission of Antitrust Information.

Under the Commission's regulations, it is a condition of every license that:

Neither the license, nor any right thereunder, . . . shall be transferred, assigned, or disposed of in any manner, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Act and give its consent in writing.

10 C.F.R. § 50.54(c) (emphasis added).

Section 50.80(a) of the regulations addresses transfers of control of licenses specifically, and provides:

No license . . . , or any right thereunder, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the license to any person, unless the Commission shall give its consent in writing.

10 C.F.R. § 50.80(a) (emphasis added). Section 50.80(b) further provides expressly that every transfer application must include the submission of specified antitrust information:

An application for transfer of a license shall include as much of the information described in §§ 50.33 and 50.34 of this part . . . as would be required by those sections if the application were for an initial license, and, if the license to be issued is a class 103 license, the [antitrust] information required by § 50.33a."

10 C.F.R. § 50.80(b) (emphasis added). The "information required by § 50.33a" includes extensive information regarding, among other things, 20-year load forecasts; requests and expressions of interest in interconnection, coordination, and power supply, since 1960, and Applicants' responses thereto; costs of purchasing power from Applicants; and proposals to merge since 1960.

2. **The Application Should be Dismissed or Held in Abeyance Because it Does Not Contain the Required Antitrust Information.**

The Commission, of course, must follow its own regulations. "An agency must indeed follow its own regulations while they remain in force." Voyageurs Region Nat'l Park Assoc. v. Lujan, 966 F.2d 424, 428 (8th Cir. 1992); Sec'y of Labor, Mine Safety & Health Admin. v. Western Fuels-Utah, Inc., 900 F.2d 318, 325 (D.C. Cir. 1990). "It is axiomatic that an agency must adhere to its own regulations." Brock v. Cathedral Bluffs Shale Oil Co., 796 F.2d 533, 536 (D.C. Cir 1986). 5/

Section 50.80(b) provides specifically that a transfer application "shall include" the antitrust information required by section 50.33a of the regulations. The application is submitted

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5/ See also Pfizer Inc. v. Heckler, 735 F.2d 1502, 1507 (D.C. Cir. 1984); Panhandle Eastern Pipe Line v. F.E.R.C., 613 F.2d 1120, 1135 (D.C. Cir. 1979), cert. denied, 449 U.S. 889 (1980).

under section 50.80 (see Application at III-1); yet, the application is totally devoid of the section 50.33a antitrust information.

The application argues that "[f]ull antitrust review" is not required, and, instead of the required 50.33a information, the application attaches and relies on materials that CSW and EPEC submitted to the FERC. Application at III-11. That is not compliance with section 50.80(b), and the Commission should dismiss or hold in abeyance the application until it is complete.

3. **If the Commission Does Not Dismiss the Application, it Should Promptly Refer the Application to the Attorney General for Antitrust Advice.**

The Commission has stated that, although not explicitly referred to in the statute, the implication of the Commission's regulations, 10 C.F.R. § 50.80(b), is that an antitrust review should be initiated "where an application for transfer of control of a license has been made." Houston Lighting & Power Co. (South Texas Project, Unit Nos. 1 and 2), 5 NRC 1303, 1318 (1977). As the Licensing Board has stated, "it would be unrealistic to look solely at the original applicant which sought ownership amendments, and ignore later applicants for a co-license to avoid a prelicensing antitrust review of the latter. . . . The regulations pertaining to the transfer [10 C.F.R. § 50.80(b)] or amendment [10 C.F.R. § 50.91] of a license or construction permit are likewise in harmony with these concepts." Detroit Edison Co. (Enrico Fermi Atomic Power Plant, Unit No. 2), 7 NRC 583, 588-89 (1978).

Consistent with these precedents, the Act, and the regulations, the Commission should promptly transmit the application and any additional information it receives to the Attorney General for her advice. As the Commission has said, "[i]n the review process the analysis and recommendation of the Attorney General are critical to the decision of whether to hold a hearing and weigh heavily in the Commission's determination of what license conditions may be warranted." South Carolina Elec. & Gas Co. (Virgil C. Summer Nuclear Station, Unit 1), 11 NRC 817, 838 (1980).

**C. The Commission May Utilize The FERC's Findings, But It May Not Abdicate Its Own Responsibilities Under The Act.**

The application argues that the materials submitted to the FERC, which also accompany the application to this Commission, demonstrate that "there will be no anticompetitive effects resulting from the Merger." Application at III-12. As a result, the application claims that the Commission can proceed to a final decision, without any antitrust review, and without even awaiting the results of the FERC's review. Id. Nonetheless, the application states that the parties "will keep the Commission informed of developments in the FERC proceedings." Id. The Commission's notice, in turn, states that "it is aware of and is closely following" the FERC proceedings, and the NRC "will consider the FERC proceeding to the maximum extent possible in resolving issues brought before the NRC." 59 Fed. Reg. 11,813 (1994).

The Commission cannot abdicate its responsibilities under the Act, by simply deferring to the FERC. In a virtually identical situation, the Court of Appeals for the District of Columbia Circuit held that, like the NRC, the Securities and Exchange Commission "may not rely upon the FERC's concurrent jurisdiction over an acquisition as a reason to shirk its own statutory mandate to determine the anticompetitive effect of that transaction." City of Holyoke Gas & Elec. Dept. v. S.E.C., 972 F.2d 358, 363 (D.C. Cir. 1992).

However, the NRC may "watchfully defer" to the FERC proceedings, so long as the NRC maintains its oversight of any conditions FERC may impose and affords others the opportunity to "return to the [NRC] and ask it to impose additional conditions upon the acquisition (or even to disapprove it)" consistent with the NRC's responsibilities. Id. at 364. In other words, the NRC can "defer[] provisionally to the FERC" regarding conditions, but it cannot avoid its own statutory responsibilities to condition the transfer of control, as appropriate. Id.

In this regard, the Commission should commence its statutory review by promptly transmitting the application to the Attorney General for review. Following receipt and publication of the Attorney General's advice 6/ and following review of any FERC findings, the NRC should assure that parties have the opportunity to "return to the [NRC] and ask it to impose addi-

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6/ The Act requires the Commission to publish the advice in the Federal Register. Act, § 105(c)(5), 42 U.S.C. § 2135(c)(5).



tional conditions," as are consistent with the NRC's statutory responsibilities, to remedy a situation inconsistent with the antitrust laws. City of Holyoke, 972 F.2d at 364.

In all events, Applicants' proposal that the Commission act now, "without awaiting the final result of FERC's review," see Application at III-12, must be rejected. Rather, the Commission should assure that any conditions imposed by the FERC as a result of its proceedings, as well as this Commission's further conditions to the extent necessary, remedy the competitive situation.

The remainder of this pleading addresses the specific antitrust issues raised by the proposed transfer of control and the remedies required to ameliorate the situation that is inconsistent with the antitrust laws. The anticompetitive situations that are implicated in this license transfer are described more fully in the affidavits and exhibits of Mr. David T. Hudson, Mr. Louis F. Ridings, Mr. John S. Fulton, and Professor Joseph P. Kalt, which accompany these comments. 7/

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7/ Southwestern's comments and analyses necessarily are preliminary, as it has not had any opportunity for discovery or other procedures to develop the facts.

IV. THE ACTIVITIES UNDER THE LICENSE AFTER THE TRANSFER OF CONTROL WILL CREATE, MAINTAIN, AND EXACERBATE A SITUATION INCONSISTENT WITH THE ANTITRUST LAWS.

- A. The Commission Must Broadly Consider Anticompetitive Situations That Are Intertwined With The License Transfer And Which Are Related To The Activities Under The License.

The acquisition of EPEC by CSW will give rise to or exacerbate several situations that are inconsistent with the antitrust laws and their underlying policies. Moreover, such situations are closely related to the proposed activities under the license.

First, as the transfers of EPEC's Palo Verde interests are part and parcel of (indeed, a condition precedent to) CSW's acquisition of EPEC itself, 8/ the anticompetitive consequences of the consolidation of the two utility systems are inextricably intertwined with the requested license transfer.

Second, Southwestern competes with CSW and EPEC in the sale of bulk power. CSW and EPEC will use Palo Verde generation in this competition. As discussed below, while using Palo Verde power to compete, EPEC and CSW will suppress bulk power competition from Southwestern by blockading Southwestern's transmission outlets.

Third, CSW and EPEC's planned post-merger use of Palo Verde generation is directly implicated in the anticompetitive consequences of the merger. CSW and EPEC plan to occupy key

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8/ See "Agreement and Plan of Merger Among El Paso Electric Co., Central and South West Corp. and CSW Sub, Inc., dated as of May 3, 1993" at 7 and 49 (Section 8.3(g)).

transmission facilities with coordination transactions between EPEC and CSW, which rely on transfers of Palo Verde energy from EPEC to CSW. CSW and EPEC plan to give priority to these Palo Verde transfers, excluding transmission of competitive firm capacity sales by Southwestern to customers and markets CSW and EPEC seek to dominate.

Thus, the anticompetitive situations arising from CSW's acquisition of EPEC and the transfer of control are exactly the sorts of situations which this Commission must address under the Act. The requirement of § 105(c) of the Act that the Commission find whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws "clearly calls for a broad inquiry." Alabama Power Co. v. N.R.C., 692 F.2d 1362, 1368 (11th Cir. 1983). The Commission is not limited to considering merely "the direct effects of the nuclear plant on the present or prospective competitive situation" id. at 1367; rather, it should consider evidence of past anticompetitive situations, as well as "the amount of market power held by the applicants and the ways it has been used." Id. at 1368.

As the Licensing Board has stated, the NRC will not foreclose inquiry into anticompetitive conduct "which is not traceable immediately and directly to operation of the licensed nuclear facility itself." Kansas Gas & Electric Co. (Wolf Creek Generating Station, Unit No. 1), 1 NRC 559, 568 (1975). Such anticompetitive conduct should be considered if it might "enhance [applicant's] ability to use nuclear-generated power to the

disadvantage of its competitors." Id. Thus, the proper inquiry for the Commission is to consider "anticompetitive situations [that are] intertwined with or exacerbated by the award of a license." Id. at 569.

**B. The Attempted Integration Of The EPEC And CSW Systems, Including Transfers Of Palo Verde Power To CSW, Will Unreasonably Block Effective Competition.**

The EPEC and CSW systems are neither adjacent to, nor directly connected with, one another. At present, EPEC does not buy firm capacity from, nor sell firm capacity to, any of the CSW companies. See Exh. APP-28 at 25-30. 9/ Nor does EPEC engage in non-firm transactions with the CSW companies. See Exh. APP-32. In fact, EPEC currently buys 50-75 MW of capacity from Southwestern at a price below the price at which CSW plans to sell capacity to EPEC after the merger. To make these sales, Southwestern uses a significant portion of the "HVDC Artesia tie," the single interconnection between the EPEC and Southwestern systems. See Hudson Affidavit at 8-10.

Despite their vast physical separation and lack of previous coordination, CSW must "integrate" the EPEC and CSW systems after the merger in order to meet the requirements of the Public Utility Holding Company Act ("PUHCA"), which requires all utilities owned by a single holding company to be capable of operation as a single integrated system. PUHCA, § 2(a)(29)(A),

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9/ References to "Exh. APP-\_\_\_" are to the exhibits that originally were filed with CSW and EPEC's FERC application and that have been submitted in support of the application to this Commission.

15 U.S.C. § 79b(a)(29)(A). In an attempt to satisfy this requirement, EPEC and CSW plan to engage in various firm and non-firm transactions using the Artesia tie and Southwestern's low-cost transmission system. In particular, during off-peak and shoulder periods, excess energy from EPEC's generation, including Palo Verde, would be made available to the CSW companies. See Exh. APP-39 at 29. Likewise, CSW will transfer capacity from its system, including nuclear capacity, to EPEC.

To effect this coordination, EPEC and CSW will use 133 MW in the Artesia tie -- all that is available -- and 133 MW of firm transmission across Southwestern's system. 10/ Yet, their integration plans envision no more than 53 MW of firm capacity sales between the two systems, and that level of firm transfers is expected to occur only in one year during the first ten years after the merger's consummation. See Exh. APP-48 and Hudson Affidavit at 17-18. All of the other exchanges between the companies would be non-firm economy transactions. 11/

Although CSW and EPEC do not need more than 53 MW of transmission capacity for firm exchanges, they would accord their

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10/ EPEC and CSW have asked the FERC to compel Southwestern to provide this service. See Application at I-10 to I-11.

11/ There is serious doubt whether EPEC and CSW could realize any benefit at all from such coordination transactions. In projecting the alleged benefits of the merger, CSW and EPEC have refused to add in the costs of transmission upgrades that would be necessary to maintain reliable service on Southwestern's system, were such transmission to be provided for CSW and EPEC. The costs of such transmission would likely exceed the minimal production and generation savings projected by Applicants. See Hudson Affidavit at 21.

economy transactions priority over firm capacity sales by Southwestern to customers in and beyond EPEC's system. Further, they would otherwise impose unreasonable conditions on transmission over the Artesia tie and EPEC's system which would hinder or block such competitive sales. CSW and EPEC's ability to exclude more efficient uses of the transmission capacity in the Artesia tie -- others' firm capacity sales -- is a clear indication of their market power.

In short, as a consequence of CSW's acquisition of EPEC and the transfers of EPEC's Palo Verde interests, CSW and EPEC will engage in transactions which presently do not occur because they are not economic, and in the process, unreasonably block Southwestern's only available outlet, the Artesia tie, to firm customers and markets served by EPEC. Notably, Southwestern is the lowest-cost supplier in the region (see Hudson affidavit at 4-7), and there is substantial interest among current customers of EPEC in purchasing power from Southwestern. Id. at 14-15. Among others, the City of Las Cruces, New Mexico, currently served by EPEC, has issued a request for proposals for a long-term firm power supply of up to 80 MW, to which Southwestern has responded. Las Cruces has advised FERC that Southwestern is its most likely new supplier. However, if CSW and EPEC, through their coordination plans or otherwise, deny Southwestern reasonable access to the Artesia tie, then Southwestern's competition

to serve Las Cruces or other markets or customers of EPEC will be frustrated. 12/

The Artesia tie is the only current means by which Southwestern can sell power into the EPEC service area, a relevant market in which EPEC is the dominant seller and as to which EPEC has the ability to exclude or control sales by others. The cost to duplicate this facility is approximately \$36 million, posing an extremely high barrier to competition if CSW and EPEC exclude others' use of the tie. See Fulton Affidavit at 8. Currently, Southwestern sells firm capacity through the Artesia tie, 13/ and would likely continue to do so, and expand its use of the tie, absent CSW's purchase of EPEC. CSW and EPEC's proposal to occupy the Artesia tie with inefficient "economy" trades in order to integrate under PUHCA likely will preclude Southwestern's access to the tie to sell firm capacity to Las Cruces and others. This anticompetitive situation 14/ stems

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12/ To underscore the anticompetitive nature of CSW and EPEC's scheme, they would realize more revenue from firm wheeling for Southwestern over the Artesia tie than from their proposed use of the tie to transmit Palo Verde and other power in economy and coordination transactions. See Hudson Affidavit at 23.

13/ Under a contract executed in 1992, Southwestern sells 50 MW of firm power to EPEC through the Artesia tie. This capacity sale will increase to 75 MW in January, 1996. Southwestern's capacity sale to EPEC supports a sale by EPEC to Mexico. See Hudson Affidavit at 10.

14/ See Affidavits of Kalt (at 20-23) and Hudson (at 17-18). CSW and EPEC's plan to block others from reasonable use of the Artesia tie represents an abuse of monopoly power proscribed by Section 2 of the Sherman Act. See MCI Communications Corp. v. American Telephone & Telegraph Co., 708 F.2d 1081, 1132-33 (7th Cir. 1983) (describing elements of the monopolization  
(continued...))

directly from CSW's acquisition of EPEC and the related transfer of control, and from CSW's planned transfers of Palo Verde power across the Artesia tie in the attempted integration of EPEC and CSW.

**C. CSW's Acquisition Of EPEC Will Dramatically Increase CSW's Monopsony Power Relative To Southwestern**

As shown in the concurrently submitted affidavit of Professor Joseph P. Kalt, CSW's acquisition of EPEC will lead to a substantial lessening of competition among the buyers that are available to purchase capacity from Southwestern. Kalt Affidavit at 38-40. As Professor Kalt explains, id. at 8, market concentration among buyers distorts markets and promotes inefficiencies, just as seller concentration does. 15/ If a low-cost producer is denied the opportunity to receive a market price for its output, through sales to all available buyers, conduct and investment that is otherwise pro-competitive will be deterred, to the detriment of the consuming public. Id. at 8.

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14/ (...continued)

claim known as the essential facilities doctrine as (1) control of facility by a monopolist, (2) impracticability of duplicating such facility, (3) that such facility could be made available for use by others and (4) denial of use of facility to a competitor). See also Consumers Power Co. (Midland Nuclear Plant), 6 NRC 892 (1977) (Appeal Board concluded that applicant had monopoly power by virtue of undeniable dominance and control of transmission facilities in the relevant geographic market).

15/ See, e.g., Environmental Action Inc. v. FERC, 939 F.2d 1057, 1062 (D.C. Cir. 1991). See also U.S. NRC, Procedures for Meeting NRC Antitrust Responsibilities (NUREG-0970) (1985) at 5, Section 2.2.6 (noting anticompetitiveness of restrictions which "limit customers from selling surplus power other than to the applicant").



The merger and transfer of control produce a monopsonistic situation that is inconsistent with the antitrust laws. Professor Kalt conducted a preliminary analysis of the buyers of firm capacity that are realistically available to Southwestern before and after the merger. Professor Kalt concludes that the buyers' market for Southwestern's capacity is currently concentrated, and would become markedly more concentrated if CSW's acquisition of EPEC goes forward. CSW will control virtually all available transmission outlets for Southwestern's surplus power, and prevent sales by Southwestern to the markets where its competition might affect CSW. As a result of this market power and control over Southwestern's market access, CSW and EPEC will have the ability and incentive to act as brokers, buying capacity from Southwestern at monopsonistically depressed prices and reselling it to utilities that have unsatisfied demands.

As shown by Professor Kalt and Mr. Hudson, Southwestern has only three realistic transmission outlets for its off-system sales of capacity -- the Artesia tie to EPEC, markets to the east through the CSW system, and markets in ERCOT. After the merger, CSW will control all of these outlets. 16/ Employing the tech-

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16/ Southwestern's few remaining interconnections with other utility systems are fully committed or otherwise unavailable. Southwestern's 200 MW "Blackwater tie" to Public Service Company of New Mexico (PNM) will be fully committed with a 200 MW sale to PNM from 1995-2011. The 200 MW Artesia tie includes 66 MW owned by Texas-New Mexico Power Company (TNP), which is fully committed with a 66 MW firm capacity sale from Southwestern to TNP extending through 2001. Finally, although Southwestern has a lower-voltage 115 kV line connecting with West Plains Energy of Kansas, that line must frequently be  
(continued...)

niques commonly used by the U.S. Department of Justice and the Federal Trade Commission to determine whether a proposed merger would lead to a substantial lessening of competition in violation of Section 7 of the Clayton Act, Professor Kalt shows that combining these transmission outlets under CSW's control will substantially increase buyer concentration. See Kalt Affidavit at 38. 17/ The competition analysis presented by CSW and EPEC ignores entirely this resulting increase in monopsony power.

EPEC already takes advantage of its control of transmission and resulting buyer market power in connection with Southwestern's existing 50-75 MW capacity sale to EPEC, which supports EPEC's sale to the Mexican state electric utility, Comision Federal de Electricidad (CFE). See Kalt Affidavit at 10-11 and Ridings Affidavit at 4-5. Southwestern sought to sell capacity directly to CFE, but EPEC denied Southwestern's request for transmission. Instead, Southwestern was forced to sell capacity to EPEC, while EPEC resells it to CFE at a markup that is well above typical wheeling costs.

Similarly, CSW enjoys a distinct advantage over Southwestern in competing for prospective customers in the Electric Reliability Council of Texas (ERCOT), where two of CSW's operating companies are located. See Kalt Affidavit at 30-32, Hudson

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16/ (...continued)

left open for operational reasons, making its use for firm capacity sales impracticable. See Hudson Affidavit at 11-13.

17/ The HHI's in the relevant buyer market would increase more than 1800 points to 4949. Id.

Affidavit at 16-17. If Southwestern wishes to sell capacity to a customer in ERCOT, it must obtain transmission over multiple CSW utilities and over other ERCOT utilities, paying separate, "pancaked" transmission tariffs which aggregate to a level that prevents a competitive sale by Southwestern. CSW, however, can utilize the transmission systems of its subsidiary companies without incurring such "pancaked" costs and thereby capture the market. CSW further can exercise this advantage by purchasing excess capacity from Southwestern, which CSW could then broker in ERCOT, while Southwestern is excluded from making direct sales as a result of CSW's anticompetitive "pancaked" rates. That CSW and EPEC already can control and limit sales by Southwestern in these ways makes their proposed combination and enhancements of their market power all the more disturbing. 18/

The dramatic increase in market power described in Professor Kalt's preliminary analysis clearly is a situation that is inconsistent with the antitrust laws which this Commission must consider and remedy. The monopsonistic "bottling-up" of Southwestern as an effective, low-cost competitor of CSW is a direct effect of the merger, of which the license transfer is an integral part.

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18/ Egregiously, CSW anticompetitively excludes Southwestern's sales in ERCOT while at the same time demanding that Southwestern provide transmission service for CSW's ERCOT power, including nuclear power, so that CSW and EPEC can integrate their systems.

D. CSW's Acquisition Of EPEC Will Consolidate Its Control Of Virtually All Transmission Paths From The U.S. To Mexico.

There are six electric transmission gateways to Mexico outside of California. 19/ See Kalt Affidavit at 44-45. After the merger, CSW will control all of them. Despite this monopolization of transmission to Mexico, CSW and EPEC do not propose to provide any transmission access to Mexico in connection with the merger. They would prefer to sell their own power, including power from Palo Verde, at above-market prices in this relevant market, without competition from Southwestern or any other U.S. electric utility.

Applicants' competition witness falsely asserts that the foreclosure of access to Mexico is not a matter for concern because there will be little opportunity for sales to Mexico in the future. He contends that CFE plans to add its own generating capacity such that it will have no need for U.S. power. Exh. APP-92 at 40. However, Southwestern's and others' ability to sell to Mexico should be determined by the market, not by Applicants' speculation about CFE's plans and CSW and EPEC's combining of control over gateways to Mexico. If CSW and EPEC truly believed that the Mexican market was unattractive, they would have no objection to Southwestern's competition.

Professor Kalt's analysis of the Mexican market on behalf of Southwestern indicates that CFE will continue to be

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19/ The transmission outlets to Mexico located in California serve a distant Mexican market.

interested in competitively priced firm bulk power from the U.S. for the foreseeable future. His analysis, based on CFE's own demand projections, shows that, even with the addition of new CFE generation, strong growth in Mexico will require continued imports of power from the U.S. His analysis further shows that, based on CSW's own fuel cost projections, CFE should prefer to purchase power and energy from U.S. sellers with economical fuel mixes, like Southwestern, because it is likely to be cheaper than CFE's new gas-fired generation. See Kalt Affidavit at 46-51.

Moreover, Applicants' own statements and behavior contradict their competition witness' opinion. In 1993, CSW opened an office in Mexico City to promote its involvement in bulk power exports to CFE, as noted in CSW's 1993 Annual Report. 20/ Moreover, CSW stressed the export potential to Mexico in its presentations to EPEC's creditors, stating that the merger "[p]rovides access to rapidly growing Mexican market;" "[a]llows participation in Mexico's distribution system;" and "[e]nhances opportunities for sales to Mexico." See Attachment 1. In fact, CSW plans to construct a new 200-300 MW HVDC tie from its ERCOT facilities to CFE to facilitate future cross-border transactions. See Exh. APP-1 at 15. 21/

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20/ Attachment 1 to this Petition includes relevant excerpts from CSW's 1993 Annual Report.

21/ Southwestern has in the past been unable to market power to Mexico over CSW's ERCOT transmission. See Ridings Affidavit at 2, 4. Under Applicants' proposal, Southwestern also would be denied access to the future line.

Applicants' competition witness also erroneously contends that CSW and EPEC's transmission paths to Mexico do not compete. He speculates that the internal Mexico transmission between the Norte region (where EPEC connects) and the Noreste region (where CSW connects) is too weak to carry power across Mexico, and will remain so, such that these regions do not comprise a single market. Exh. APP-92 at 40-41. However, Applicants are wrong. CFE plans to upgrade its internal transmission in the next several years, substantially increasing power flows between the Norte and Noreste regions and demonstrating that the areas accessible to both CSW and EPEC do comprise a single market. See Kalt Affidavit at 51-52. Absent the merger, Southwestern, EPEC, and others could compete with CSW for sales to Mexico. Indeed, without the merger, EPEC would have an incentive to upgrade its own ties to Mexico, to ship its and others' power. In fact, it recently did just that. See El Paso Electric Co.; Issuance of Presidential Permit; and Amendment Of Electricity Export Authorization, 57 Fed. Reg. 19,117 (1992). The merger obliterates EPEC's incentives to permit others to sell power to Mexico. Indeed, to make sure there is no competition, CSW and EPEC propose that their "open" access transmission tariffs expressly exclude access to Mexico. 22/

The effects of anticompetitive conduct on exporters are specifically cognizable under the U.S. antitrust laws. See

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22/ Applicants also misportray the existing competition between them for sales to Mexico. CSW and EPEC recently competed directly for sales to Juarez. See Ridings Affidavit at 4-5.

Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 113-133 (1969). See also Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 695, 702-08 (1962); United States v. Itoh & Co., 1982-83 Tr. Cas. (CCH) § 65,010 (W.D. Wash 1982); Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a (providing explicitly for jurisdiction over conduct that "has a direct, substantial, and reasonably foreseeable effect . . . on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States").

Furthermore, the North America Free Trade Agreement ("NAFTA"), with its objectives to reduce "distortions to trade" and to "promote conditions of fair competition" in trade between the U.S. and Mexico, NAFTA, Article 102, ¶ 1, underscores that the national energy policy to promote competitive forces in bulk power markets applies with full force to cross-border trade. In light of the commitments undertaken by the U.S., and the reciprocal commitment of Mexico to liberalize its electric power markets, the Commission ought not to put CSW in a position to dictate the terms of access by U.S. power to Mexico, and deny other U.S. exporters any benefit from that liberalization. The Commission must remedy the anticompetitive situation, and not allow CSW and EPEC to sell their power, including nuclear power, to Mexico, while excluding competitors from the market.

V. THE COMMISSION SHOULD ENSURE THAT ITS OWN CONDITIONS, ALONG WITH ANY CONDITIONS IMPOSED BY OTHER AGENCIES, REMEDY THE ANTICOMPETITIVE SITUATION.

The broad antitrust inquiry which the Commission must undertake pursuant to Section 105(c) of the Act is paralleled by broad authority to remedy potentially anticompetitive situations that may arise from or be exacerbated by the requested license transfer. Section 105(c)(6) provides that where the Commission finds a situation inconsistent with the antitrust laws, it has the authority "to issue a license with such conditions as it deems appropriate." The Licensing Board has elaborated upon the scope of this remedial authority:

The Commission has wide discretion in fashioning 'appropriate' license conditions 'where necessary to rectify anticompetitive situations.' '[N]o type of license condition -- be it a requirement for wheeling, coordination, unit power access, or sale of an interest in the plant itself -- is necessarily foreclosed as a possible form of relief.' And the license condition need not be confined in its application to activities under the license.

Alabama Power Co. (Joseph M. Farley Nuclear Plant Units 1 and 2),  
13 NRC 1027, 1099 (1981) (footnotes omitted).

As shown above, the transfer of control over EPEC's Palo Verde interests, and the proposed and potential changes in the use of Palo Verde generation, will create, contribute to, and exacerbate a number of anticompetitive situations, including unreasonably blocking Southwestern from access to the Artesia tie, increasing CSW and EPEC's monopsony control relative to Southwestern, and monopolizing transmission to Mexico.



Despite the suggestion of Applicants' competition witness, these anticompetitive situations are not mitigated by EPEC's offer to provide "open" transmission access on its system. EPEC's proposed transmission tariff does not mitigate the market power of the entire post-merger company, and even as to EPEC, the tariff still allows EPEC substantial discretion to block competition. EPEC's tariff specifically excludes transmission service to a "foreign country", i.e., to Mexico. See Exh. APP-6 at 11. As previously shown, notwithstanding the tariff, CSW and EPEC plan to occupy the EPEC-Southwestern interconnection with coordination trades and to block competitive firm sales by Southwestern. Moreover, CSW and EPEC seek to preserve their post-merger market power by maintaining barriers to sales by others into ERCOT. To effectively mitigate that market power, the terms and conditions of access by others to ERCOT markets should be no different from the conditions CSW imposes on itself when it transmits its subsidiaries' power and energy for sale into ERCOT.

Accordingly, the Commission should impose the following conditions, which are the minimum necessary to remedy these anticompetitive situations:

1. The Commission should require CSW and EPEC to provide firm transmission access through the Artesia tie and EPEC's system for at least 80 MW (corresponding to the difference between CSW's planned maximum firm use of the Artesia tie and its full capacity) at a transmission rate based on the average embedded cost of the CSW transmission system.

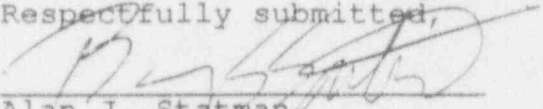
2. To counterbalance CSW's increased monopsony power over Southwestern, CSW should be required to provide open access transmission on all of its utilities' systems, including those in ERCOT, with a single-system tariff and a single rate based on the average embedded cost of the CSW transmission system.
3. To prevent the anticompetitive abuse of EPEC and CSW's monopoly control over the transmission gateways to Mexico, the open transmission access should specifically include access to Mexico.
4. The Commission should order such further conditions as it finds necessary to remedy the anticompetitive situations.

#### VI. CONCLUSION

For the foregoing reasons, Southwestern requests that the Commission (1) grant Southwestern leave to intervene; (2) either dismiss the Application or hold it in abeyance pending the submission of the antitrust information required by 10 C.F.R. § 50.33a; (3) promptly transmit the Application and any subsequent submission of antitrust information to the Attorney General for her advice; (4) take no final action on the application until the

FERC has completed its review and then, to the extent necessary, convene an antitrust hearing; and (5) impose the remedial conditions discussed above.

Respectfully submitted,



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ATTACHMENT 1

Excerpts From Central & Southwest  
Corporation's 1993 Annual Report  
and Slide Presentation (6 pages)

*The electric utility industry faces a restructuring resulting from competition that will cause dramatic changes in the way it does business. In this new competition, some utilities will win, and some will lose.*

**We are  
reshaping  
Central and  
South West  
Corporation  
to win.**

Central and South West Corporation

1993 Annual Report



### Expanding our core utility business

CSW is committed to expanding its electric utility business through strategic acquisitions. In 1993 it acquired two small utilities and made substantial progress toward adding El Paso Electric Company to the system.

CSW's Southwestern Electric Power Company subsidiary completed its purchase of Bossier Electric Membership Corporation (BREMCO), which was adjacent to SWEPCO's southern division in Louisiana. BREMCO served 12,500 customers, who saw their cost for electricity decline from 9.7 cents to SWEPCO's price of 6.7 cents per kilowatt-hour.

Public Service Company of Oklahoma, another CSW subsidiary, acquired the Chelsea Municipal Authority, adding 225 customers.

The most important acquisition ever undertaken by CSW is its pending merger with El Paso Electric. CSW announced the merger in May 1993. The total transaction value is expected to be about \$2.2 billion. Of that, approximately \$770 million is expected to be paid in the form of CSW common stock. The balance would be new securities issued by El Paso Electric as part of its bankruptcy reorganization or cash.

In December 1993 the U.S. bankruptcy court overseeing the El Paso Electric case confirmed the utility's plan of reorganization, which incorporates the merger agreement with CSW. The proposed acquisition now must be approved by state and federal regulatory agencies.

By adding El Paso Electric, CSW will be able to improve its systemwide efficiencies. It also will expand its connections with electricity markets in the western United States and with Mexico, which is a strategically important market for both CSW's utilities and its functionally related non-utility activities. CSW remains interested in other strategic acquisitions of utilities.



### Expanding our non-utility businesses

CSW has been carefully diversifying into functionally related non-utility businesses since the mid-1980s and now has a portfolio of activities that build on its core markets and skills.

Transok, Inc., an intrastate natural gas transmission company, serves all four CSW electric utility subsidiaries, CSW Energy, Inc., and other customers. Since 1990 it has more than doubled its pipeline system to approximately 6,400 miles and its annual gas throughput to 490 billion cubic feet. The second-largest natural gas processor in Oklahoma, Transok owns and operates eight gas processing plants. Transok produced 355 million gallons of natural gas liquids in 1993, compared to 125 million gallons in 1990.

CSW Energy, Inc., develops, operates, manages and acquires non-utility power projects. At the end of 1993, it had one cogeneration facility in operation in California and three expected to begin operating in 1994, one in Florida and two in Colorado. CSW Energy owns approximately half of each of those projects, which collectively will provide nearly 500 megawatts of electric power.

CSW is actively pursuing a series of new ventures in technologies that are directly related to the corporation's expertise and core markets. In 1994 CSW hopes to receive approval from the Securities and Exchange Commission for a new telecommunications subsidiary. CSW is sponsoring a project to install fiber-optic telecommunications as a test in one of its utility service areas. The purpose of this project is to improve energy efficiency for our utility customers, with any excess telecommunications capacity available to third parties. Other ventures may include renewable-energy and environmental technologies.



### Pursuing financial initiatives

One of CSW's fundamental strategies is to examine the financial elements of the corporation in search of ways that could produce a profit or reduce its cost. Financial initiatives produced increased benefits in 1993.

In 1985 CSW became the first utility to establish a captive finance company, CSW Credit, Inc. CSW Credit purchases the accounts receivable from both affiliated companies and non-affiliated utilities. Because of differences in the financial structures and cost of money between utilities and finance companies, this practice can lower costs for utilities—and it can result in a profit for CSW Credit. In 1993 CSW Credit added a new utility client—its largest—which doubled the base of its business.

CSW also continued refinancing its debt to take advantage of lower interest rates. During 1993, the CSW system companies refinanced \$708 million of debt to achieve annual interest savings of \$17 million, with a net present value savings of \$68 million. These transactions reduced CSW's embedded cost of debt from 8.3 percent at the end of 1992 to 7.8 percent at the end of 1993.

In 1993 CSW expanded a cost-effective source of capital by modifying its dividend reinvestment plan. The new plan, named PowerShare<sup>SM</sup>, was open to all CSW employees and retirees as well as to its utility customers and other residents of the four states where CSW subsidiaries operate. PowerShare participants will be able to reinvest all or any portion of their dividends in CSW common stock. Based on the experience of similar plans, CSW expects that 10 percent of its customers will participate, providing significant amounts of new equity.



Because the federal Energy Policy Act of 1992 gave companies like CSW Energy/ much wider latitude in the types of power projects that they can pursue, we see this unit as a long-term investment with significant growth potential.

Other non-utility activities that we are investigating involve new technologies related to our customers or our areas of expertise, such as fiber-optic telecommunications, renewable and other energy technologies, and environmental services.

The opening of our office in Mexico City represents a significant milestone in developing the long-term potential for our non-utility activities. It comes as a result of our long history of cooperative activities with Mexico's Comisión Federal de Electricidad.

We have been doing business with Mexico since 1916. Today, the potential for a more extensive involvement has never been greater. Under President Carlos Salinas de Gortari, the Mexican economy has been rapidly improving. Mexico is now one of the fastest growing economies in the world, with projected growth in electricity use of more than 5.5 percent a year. The country is expected to add 17,000 megawatts of capacity by the year 2000.

The passage of the North American Free Trade Agreement, which we actively supported, should help to make it possible for American firms to be far more active in the Mexican electric power market. We see the opportunity to help plan and build power plants and cogeneration facilities, to expand our transmission ties and to provide bulk power sales and backup power to industry and the government. Moreover, free trade with Mexico should help the economy of South Texas, where our Central Power and Light subsidiary operates.

Our Mexican initiatives are not designed for any dramatic short-term benefits. They will require persistence and patience, as Mexican economic policies and the trade relationship between our two countries evolve. Challenges are great in foreign markets; many international companies are competing fiercely for these growth opportunities. But over the long term, our historic relationship with Mexico and our geographic location will prove to be among our greatest assets. We intend to make the most of it, for the benefit of our current areas of operation, the economy of Mexico and our shareholders and customers.



### *Mexico*

In 1993 CSW continued its Mexico initiative that began in 1992. The Corporation's goal is to participate in providing the country's future electricity needs. Mexico is projecting growth in electricity requirements of more than 5.5% per year over the next decade. The geographical location of the CSW System offers opportunities to provide bulk power sales to Mexico. In addition, the Corporation intends to participate in the development of transmission facilities, independent power projects and cogeneration in Mexico. Recent changes in Mexican statutes and regulations now permit participation in such ventures. The opening of an office in Mexico City allows CSW greater access to key Mexican industrial and governmental officials, permitting the Corporation to more readily evaluate opportunities as they become available. The passage of the North American Free Trade Agreement in 1993 should enhance the potential for the Corporation to become far more active in the Mexican electric power market.

### **Other Initiatives**

To meet its strategic goals the Corporation will continue to search for possible electric utilities to acquire and will continue evaluating opportunities to pursue functionally related non-utility businesses. The Corporation is, for example, exploring opportunities in telecommunications, energy, the environment, and other technologies. Furthermore, the Corporation has broken ground for the most comprehensive renewable energy project in the Southwest, encompassing photovoltaics, wind turbines, rooftop solar panels, and innovative solar-dish Stirling engines.





**MERGER OF  
CENTRAL AND SOUTH WEST CORPORATION  
AND  
EL PASO ELECTRIC COMPANY**





## STRATEGIC VALUES OF EL PASO MERGER

- Consistent with CSW's Strategic Plan
- Desirable existing customer base and service territory with excellent growth opportunities
- Provides access to rapidly growing Mexican Market
- Enhances opportunities for sales to Mexico
- Provides transmission access to Western U.S. Bulk Power Markets
- Enhances opportunity for additional acquisitions opportunities
- Allows participation in Mexico's distribution system

