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A Law Partnership Including Professional Corporations

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October 25, 1999

U.S. Nuclear Regulatory Commission  
Document Control Desk  
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11555 Rockville Pike  
Rockville, MD 20852

**Re: Request to Extend Effective Date of Commission's "Order Approving the Application Regarding Proposed Corporate Merger of Central and South West Corporation and American Electric Power Company"**

Ladies and Gentlemen:

On November 5, 1998, the Commission issued the above referenced Order which approved Central Power and Light Company's application for the indirect transfers of control to American Electric Power Company ("AEP") of its possessory interest in Operating Licenses Nos. NPF-76 and NPF-80 for the South Texas Project, Units 1 and 2. This Order is required as a precondition of the pending merger of Central Power and Light Company's parent, Central and South West Corporation ("CSW"), with AEP. The Commission's Order was subject to the following condition: "(2) should this merger not be completed by December 31, 1999, this Order shall become null and void, unless upon application and for good cause shown this date is extended." For the reasons set forth below, Central Power and Light Company ("CPL") and AEP hereby request that the Commission extend the effective date of its Order approving the license transfer until June 30, 2000.

Because of unavoidable delays in securing all required regulatory approvals, the merger between AEP and CSW will not close prior to December 31, 1999. Notwithstanding the best efforts of AEP and CSW to provide complete and timely information, the Federal Energy Regulatory Commission ("FERC") has not completed its review of the pending merger application and has not granted the necessary approvals required for consummation of the merger. FERC has issued an order (attached as Exhibit 1) in which it states that a final decision should be issued no later than March 2000.

CSW and AEP have been diligent in seeking to obtain all required regulatory approvals from federal and state agencies. The merger has received conditional approval by state regulatory commissions in Arkansas and Louisiana, and approval in Oklahoma. Recently, the Administrative Law Judge, who conducted hearings in proceedings held by the Public Utility Commission of Texas ("PUCT"), recommended approval of the pending merger after AEP, CSW, the PUCT Staff and other parties reached a stipulated settlement. AEP and CSW have announced settlement agreements with the International Brotherhood of

ADD 11

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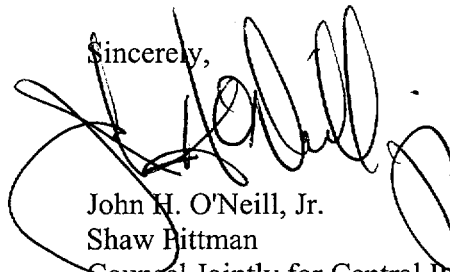
Electrical Workers (IBEW) and the Utility Workers Union of America (UWUA), as well as with the Indiana Utility Regulatory Commission, the Missouri Public Service Commission, and with parties in Kentucky (approved by the Kentucky Public Service Commission). The merger also requires approval by the FERC, the SEC and review by the Department of Justice.

In light of the FERC scheduling order, AEP and CSW now believe that all required regulatory approvals can be obtained, and the proposed merger completed, prior to the end of the first quarter of next year. Based on the unanticipated length of the FERC review process and FERC's pledge of forthcoming final action, good cause exists for approving the requested six-month extension of the Commission's Order.

CPL and AEP have reviewed the original application for NRC approval of the indirect transfer of control and the information relied upon by the NRC as reflected in the Safety Evaluation Report, dated November 5, 1998. There has been no material change in the information provided in the original application and relied upon by the NRC Staff. We note that since the date of the NRC Order, the State of Texas has passed utility restructuring legislation that will result in wholesale and retail electricity competition in Texas and mandatory restructuring of CPL in the future. This will not occur, however, prior to the closing of the CSW/AEP merger.

If you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



John H. O'Neill, Jr.  
Shaw Pittman  
Counsel Jointly for Central Power and Light,  
and American Electric Power

#### Attachment

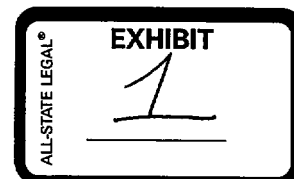
cc: Regional Administrator, NRC Region IV  
Senior Resident Inspector, the South Texas Project  
NRR Project Manager, the South Texas Project  
W. T. Cottle, President & CEO, STPNOC  
Steven R. Hom, NRC Office of General Counsel  
Robert Wood, NRC Division of Reactor Program Management

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bcc: Gerald E. Vaughn  
Kenneth C. Raney, Jr.  
Bradford R. Signet  
Jeffrey Cross

Document #: 823743 v.1



UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
Vicky A. Bailey, William L. Massey,  
Linda Breathitt, and Curt Hébert, Jr.

760863

American Electric Power Company )  
and ) Docket Nos. EC98-40-000,  
Central and South West Corporation ) ER98-2770-000, and  
ER98-2786-000

ORDER DENYING MOTION TO WAIVE INITIAL DECISION  
AND ESTABLISHING DATES

(Issued July 28, 1999)

On June 28, 1999, American Electric Power Company (AEP) and Central and South West Corporation (CSW) (jointly, Applicants) filed a motion requesting waiver of the initial decision in Docket Nos. EC98-40-000 and ER98-2770-000. 1/ The Commission will deny the motion, and instead direct the Presiding Judge to issue an initial decision as soon as possible, but no later than November 24, 1999, in Docket Nos. EC98-40-000 and ER98-2770-000.

BACKGROUND

By order dated November 10, 1998, the Commission set for hearing the proposed merger of AEP and CSW, noting that there were significant factual and analytical issues to be resolved. 2/ The Commission determined that a hearing was necessary because: (1) the proposed merger failed Applicants' own screen analysis for measuring market concentration and the proposed remedy for merger-related competitive harm in markets adversely affected by the merger would be ineffective; (2) there were problems with the

1/ Docket No. EC98-40-000 is the merger docket. Docket No. ER98-2770-000 involves the system integration and transmission reassignment tariffs. Applicants do not seek waiver of the Initial decision in Docket No. ER98-2786-000, which involves the joint open access transmission tariff and standards of conduct for the merged system's transmission services.

2/ American Electric Power Co. and Central and South West Corp., 85 FERC ¶ 61,201 at 61,818 (1998) (Hearing Order), reh'g pending.

data and assumptions used in Applicants' screen analysis; and (3) other factors in this particular case suggested that Applicants' screen analysis may not fully capture the effect of the merger on competition. <sup>3/</sup> The Commission directed that "the full range of potential competitive harm potentially caused by the merger based on the most recently available data and the mitigation necessary to remedy any such harm" <sup>4/</sup> should be addressed at the hearing.

The Hearing Order also consolidated and set for hearing three rate schedules designed to integrate and operate Applicants' systems on a coordinated basis after the merger (Docket No. ER98-2770-000), and a joint open access transmission tariff (Docket No. ER98-2786).

On May 24, 1999, Applicants and Trial Staff filed a trial stipulation in which Applicants make certain commitments (such as proposing to join an RTO and transferring transmission service, security, and control area responsibilities for a portion of the merged system to an RTO) and Trial Staff commits that it will not oppose Applicants on designated issues.

On June 28, 1999, Applicants filed a motion to waive the initial decision in Docket Nos. EC98-40-000 and ER98-2770-000. Essentially, Applicants make two arguments. First, they argue that an initial decision will delay the merger. Second, they maintain that the initial decision can be dispensed with, because the stipulation Applicants reached with Trial Staff resolves most of the issues and only policy questions remain for the Commission to decide.

Numerous parties, including Trial Staff, filed answers opposing Applicants' motion. These parties argue, among other things, that: (1) the stipulation between Trial Staff and Applicants does not resolve any issues as to any other party; (2) there are extremely complex factual and analytical issues in dispute that are best resolved by the Presiding Judge, since he is familiar with the record and in the best position to rule on the credibility and weight of the evidence presented by approximately 36 witnesses; (3) many of the policy issues are bound up in substantive factual disputes such as the relevant product markets and the efficacy of certain mitigation proposals; (4) Applicants offer nothing specific to this merger that calls for bypassing an initial decision; (5) although the Merger Policy Statement <sup>5/</sup> sets a 12-15 month target period for a decision on a

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<sup>3/</sup> Hearing Order, 85 FERC at 61,818-19.

<sup>4/</sup> Id. at 61,819.

<sup>5/</sup> Inquiry Concerning the Commission's Merger Policy Under the  
(continued...)

merger set for hearing, the Merger Policy Statement also states that the target period will not apply if a merger "raises extraordinarily complex factual disputes, or if the development of competitive remedies or hold harmless agreements is entirely deferred to the hearing," 6/ as is the case in this proposed merger; (6) omitting an initial decision will not expedite the Commission's decision in this proceeding since the Commission will have not have the benefit of the Presiding Judge's analysis and will have to sift through an unfamiliar record; (7) waiving the initial decision in this case will set a bad precedent for merger cases; (8) much of the delay in the proceeding could have been avoided if the Applicants had submitted an adequate screen analysis with their application, responded to the Commission's request for additional information more expeditiously, and not filed flawed testimony, which they then failed to correct for two months; and (9) the merger agreement between AEP and CSW provides for an automatic extension to June 30, 2000 if the merger is not completed by December 31, 1999 due to delay in obtaining regulatory approvals.

On July 21, 1999, Applicants filed a reply to the answers, responding to these arguments and reiterating arguments made in their motion.

#### DISCUSSION

The Commission finds that waiving the initial decision in this case at this stage of the proceeding will not, in fact, speed up the preparation of a Commission opinion and may make it materially more difficult. This is because, without the benefit of an initial decision, the Commission would need additional time to review the record and decide on the credibility and weight to give to the evidence.

The Commission is, however, aware of the need for expedited action in this case. Accordingly, the Commission directs the Presiding Judge to issue an initial decision on the merger and system integration issues in Docket Nos. EC98-40-000 and ER98-2770-000 as soon as possible, but no later than November 24,

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5/ (...continued)  
Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (1996), order on reconsideration, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

6/ Id. at 30,127.

1999. 7/ In the event that the Presiding Judge concludes that the currently-established dates for initial and reply briefs 8/ should be altered to meet a November 24, 1999 or earlier date for issuance of an initial decision, he can establish new briefing dates.

The Commission also directs the parties to file briefs on exceptions on or before 21 days following issuance of an initial decision and briefs opposing exceptions on or before 14 days following the filing of briefs on exceptions. We expect to act on the initial decision as promptly as possible after receiving briefs on and opposing exceptions. This schedule would allow the Commission to act in February or no later than March 2000.

The Commission orders:

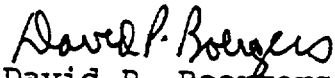
(A) The Applicants' motion to waive the initial decision in Docket Nos. EC98-40-000 and ER98-2770-000 is hereby denied.

(B) The Presiding Judge is hereby directed to issue an initial decision in Docket Nos. EC98-40-000 and ER98-2770-00 on or before November 24, 1999.

(C) The parties are directed to file briefs on exceptions to the initial decision on or before 21 days following issuance of an initial decision and briefs opposing exceptions on or before 14 days following the filing of briefs on exceptions.

By the Commission. Commissioner Bailey concurred with a separate statement attached.

( S E A L )

  
David P. Boergers,  
Secretary.

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7/ The Commission is not setting a date by which the Presiding Judge must issue an initial decision in Docket No. ER98-2786-000.

8/ See the Presiding Judge's July 21, 1999 order in these proceedings: "Order Scheduling Post-Hearing Procedures."

American Electric Power Company )  
and )  
Central and South West Corporation )

760873

Docket Nos. EC98-40-000,  
ER98-2770-000, and  
ER98-2786-000

(Issued July 28, 1999)

Bailey, Commissioner, concurring

I concur in today's decision. I believe it is preferable to achieve some expedition rather than achieve no expedition at all in the processing of the Applicants' merger application.

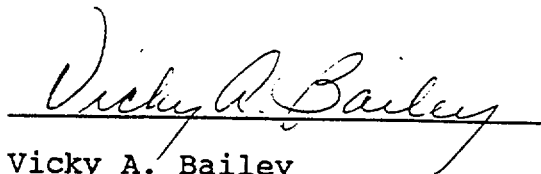
I am not, however, enthused with the prospect of Commission action next year, even with the pledge of Commission action in February or March of 2000. Throughout this proceeding, the Applicants have stressed the need for Commission action by the end of 1999, in order to secure necessary regulatory approvals and to finalize details and commitments. Given that the Applicants originally filed their application on April 30, 1998, and subsequently amended their application on August 11, 1998, at the request of Commission staff, I do not view their request for Commission action within 20 months (or 17 months from the date of their completed application) to be unreasonable.

I believe that it is imperative for the Commission to allow regulated utilities the ability to respond to competitive changes and opportunities in a timely manner. In a dissent to a Commission ruling on an interlocutory appeal on a discovery dispute in this proceeding, issued back in January of this year, I expressed my concern for the Commission's ability to act in this case in a timely manner: "It is my hope that the hearing can be completed as quickly as possible, and that the Commission can issue a post-hearing opinion in a time frame compatible with the Applicants' request for timely (1999) Commission action." American Electric Power Co. and Central and South West Corp., 86 FERC ¶ 61,091 at 61,332-34 (1999) (interlocutory appeal order).

I certainly understand the complexity of the issues raised, and the tenacity of intervenors in raising their issues. I do not suggest that this is the type of merger case, set for hearing, that necessarily should be resolved within the 12-15 month target period for decision established in the Merger Policy Statement. But I do not view the case as so complex as requiring Commission action only after close to two years of review. This is especially true now that the Applicants have entered into negotiated stipulations with Trial Staff and numerous other parties (including state commissions) resolving many of the outstanding issues.



I would prefer quicker action. That is among the reasons that I resisted the Commission's decision to expand the scope of pre-hearing discovery in its interlocutory appeal order. I sincerely hope that the "expedition" we offer today is not too little, too late.

A handwritten signature in cursive script that reads "Vicky A. Bailey". The signature is written in dark ink and is positioned above a horizontal line.

Vicky A. Bailey  
Commissioner