



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF TEXAS UTILITIES COMPANY AND ITS
SUBSIDIARY COMPANIES TO THE NRC STAFF'S
SUPPLEMENTAL REQUEST FOR PRODUCTION OF DOCUMENTS

COME NOW TEXAS UTILITIES COMPANY ("TU"), TEXAS UTILITIES GENERATING COMPANY ("TUGCO"), DALLAS POWER & LIGHT COMPANY ("DPL"), TEXAS ELECTRIC SERVICE COMPANY ("TESCO"), and TEXAS POWER & LIGHT COMPANY ("TPL"), all collectively referred to as "TU Companies", in compliance with Section 2.740b and 2.741 of the Rules and Practice of the Nuclear Regulatory Commission ("NRC"), and make the following response to the above captioned request for production of documents.

Mr. E. D. Scarth, Vice-President of Texas Electric Service Company, has been previously identified as a designated expert witness for the Texas Utilities Company and its subsidiary companies in this proceeding. Mr. Scarth's educational business and professional background and experience have been set forth in detail in his prior testimony before the Texas Public Utility Commission in Docket 14, and his testimony before the Texas Federal District Court in the West Texas Utilities Company et al. vs. Texas Electric Service

Company et al. 470 Fed. Sup. 708 (1979) and in his filed testimony before the Securities and Exchange Commission in Central and Southwest Corporation et al., Administrative Procedure file no. 3-4951.

A summary of the status of various proceedings related to the CSW controversy is attached hereto as Exhibit A. Mr. Scarth has been provided copies of testimony and depositions taken in connection with those related proceedings, together with the principal pleadings, opinions, orders and related file papers in connection with those proceedings, copies of all of which have been previously made available for inspection and copying by all interested parties in this proceeding.

Copies of the work papers which support Mr. Scarth's testimony in the Federal Court case, along with copies of his filed testimony and the work papers supporting his filed testimony in the SEC proceeding have been delivered to the Staff, the Department and other parties to this proceeding requesting same.

To a large extent, the testimony of Mr. Scarth will rely upon his vast experience covering more than thirty five years of engineering education and direct professional experience in the electric utility industry. To the extent that his testimony is based upon his operating, planning and engineering on-the-job experience, it is literally impossible to produce every such document.

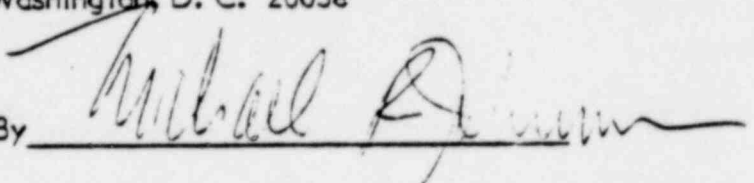
The TU companies reserve the right to provide supplemental responses to this document request from time to time as appropriate.

Respectfully submitted,

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By

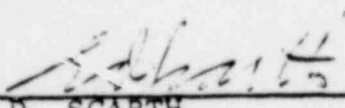
A handwritten signature in dark ink, appearing to read "Michael R. Quinn", written over a horizontal line.

ATTORNEYS FOR TEXAS UTILITIES COMPANY,
TEXAS UTILITIES GENERATING COMPANY,
DALLAS POWER & LIGHT COMPANY,
TEXAS ELECTRIC SERVICE COMPANY AND
TEXAS POWER & LIGHT COMPANY

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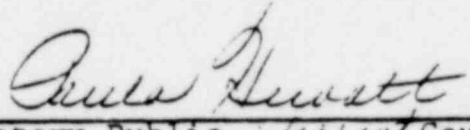
THE STATE OF TEXAS :
COUNTY OF *Tarrant* :

BEFORE ME, the undersigned authority, a Notary Public in and for *Tarrant* County, Texas, on this day personally appeared E. D. SCARTH, well known to me to be a credible person, who, after being by me first duly sworn, did depose and say that he is duly authorized to respond to the Supplemental Request for Production of Documents from the Nuclear Regulatory Commission Staff on behalf of the TU Companies, has read the foregoing Response of the TU Companies, and the same is true and correct to the best of his knowledge and belief.



E. D. SCARTH

SUBSCRIBED AND SWORN TO before me this *10th* day of *October*, 1979 to certify which witness my hand and seal of office.



Notary Public, *Tarrant* County,
Texas

My Commission Expires:

December 27 1980

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STATUS REPORT AS OF OCTOBER 3, 1979
OF VARIOUS RELATED
ADMINISTRATIVE PROCEEDINGS AND LITIGATION
INVOLVING
CENTRAL AND SOUTH WEST CORPORATION,
TEXAS UTILITIES COMPANY SYSTEM,
HOUSTON LIGHTING & POWER COMPANY,
ET AL.

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CHRONOLOGY

I.

Securities and Exchange Commission Administrative Procedure File No. 3-4951

1. Certain Oklahoma municipalities and cooperatives filed a motion with the SEC on March 26, 1974, seeking an inquiry into CSW's status under the Public Utility Holding Company Act of 1935.
2. CSW filed its Supplemental Memorandum on December 31, 1975.
3. Notice of and Order for Hearing issued by SEC on January 30, 1976.
4. TU companies, HL&P and others intervened on February 26, 1976.
5. Prehearing conference held on May 12, 1976.
6. Hearings were held in September, 1976, September, 1977, February and March, 1978 and January, 1979. CSW completed its direct case on January 30, 1979.
7. HL&P made a motion to present its Stagg Study which was denied by the Administrative Law Judge on January 30, 1979.
8. The SEC reversed the ruling of the ALJ on July 9, 1979.
9. Prepared testimony of the TU companies filed in early July, 1979.
10. Hearings to resume to proceed with cross-examination by CSW on October 23, 1979.

II.

Federal Energy Regulatory Commission (FPC) Docket No. E-9558

1. Petition of CSW to declare HL&P and TU jurisdictional filed May 4, 1976.
2. Responses of the TU companies and HL&P filed in May, 1976.
3. Final Order entered July 21, 1976.
4. CSW's Motion for Rehearing denied September 17, 1976.
5. Appealed by CSW and certain Oklahoma consumers to U. S. Court of Appeals for D. C. Circuit on November 1, 1976.

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6. Oral argument had February 20, 1978.
7. Decision rendered by Court of Appeals on April 10, 1978, remanding July 21, 1976 Order to FERC for clarification.
8. Petition for Rehearing filed by TU companies on April 24, 1978. Denied on May 27, 1978.
9. Petition for writ of certiorari filed by TU companies with U. S. Supreme Court on August 24, 1978. Denied November, 1978.
11. No action yet taken by FERC with respect to remand.

III.

WTU and CP&L v. TESCO and HL&P U. S. District Court for the Northern District of Texas

1. Plaintiffs' Original Complaint filed May 3, 1976, seeking a decree that continued operation under the intrastate covenant of the TESCO-WTU 1938 contract, as amended, is in violation of the Federal antitrust laws and generally to require TESCO and HL&P to operate interconnected with the interstate facilities of WTU and CP&L.
2. Both Plaintiffs' and Defendants' motions for summary judgment, as well as Plaintiffs' motion for leave to amend complaint, were denied on June 14, 1977.
3. Trial occurred during the months of October and November, 1978.
4. On January 30, 1979, the Court issued a Memorandum Opinion, and on February 27, 1979, rendered judgment, holding, among other things, that Defendants had not violated the federal antitrust laws and that it would not be in the public interest to force the Defendants to interconnect in interstate commerce.
5. Plaintiffs' Motion for Rehearing and Stay was denied by order dated May 15, 1979.
6. WTU and CP&L have appealed the judgment to the U. S. Court of Appeals for the Fifth Circuit.
6. Appellants' brief is due November 5, 1979.

IV.

Public Utility Commission of Texas Docket No. 14

1. Emergency hearing held May 7, 1976.

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2. Order finding no emergency but permitting each system to operate as it chose issued on May 24, 1976.
3. Motions of TU and HL&P to hold a hearing filed January 7, 1977.
4. Others intervened in January, 1977.
5. Numerous prehearing conferences held from January 25, 1977 - May 2, 1977, to accommodate Austin, CPSB and LCRA to disconnect from CP&L/WTU.
6. Interim Order entered May 2, 1977.
7. Interim Order appealed by CP&L and WTU to District Court of Travis County, Texas in May, 1977.
8. Suit filed by CP&L and WTU in U. S. District Court for the Western District of Texas, Austin Division in May, 1977, seeking declaratory judgment that Interim Order is void.
9. Final Order entered June 2, 1977, following hearings in May, 1977.
10. Amended Final Order entered July 11, 1977.
11. Motion for rehearing of Amended Final Order filed by WTU and CP&L on July 22, 1977, which was denied.
12. U. S. District Court complaint amended July 29, 1977, by CP&L and WTU to include Amended Final Order.
13. Petition in State Court appeal amended by CP&L and WTU on August 2 and September 16, 1977, to include Amended Final Order.
14. TU Companies and HL&P intervened in State and Federal Court suits in October, 1977.
15. The U. S. and FERC intervened as Plaintiffs in Federal Court suit in early May, 1978.
16. Federal Court suit dismissed on May 11, 1978, without prejudice to the refiling thereof after the Texas courts have addressed the state law questions in the case.
17. Oral argument held in State Court appeal on December 4, 1978. Decision pending.
18. Dismissal of Federal Court suit appealed by WTU and CP&L to U. S. Court of Appeals for Fifth Circuit. On March 28, 1979, the Fifth Circuit affirmed the decision of the U. S. District Court. No appeal was taken therefrom.

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V.

Nuclear Regulatory Commission
Docket Nos. 50-498A and 50-499A
(South Texas Project)

1. Decision of Atomic Safety and Licensing Appeal Board rendered March 18, 1977.
2. Appealed by CP&L to the U. S. Court of Appelas for the D. C. Circuit on May 18, 1977.
3. Order of NRC entered June 15, 1977.
4. Appealed by CP&L to U. S. Court of Appeals for the D. C. Circuit on July 26, 1977, and consolidated with action described in 2 above.
5. On February 21, 1978, the Department of Justice, in response to the request of the NRC Staff pursuant to the above-mentioned Order of June 15, 1977, rendered the requested advice and concluded that changed circumstances required that an antitrust hearing be held on the operating license application.
6. Notice of Antitrust Hearing on Operating License Application published in the Federal Register on April 14, 1978.
7. TUGCO, DP&L, TESCO and TP&L filed a petition to intervene on April 28, 1978.
8. On May 16, 1978, the NRC Staff filed an Answer opposing the petition to intervene of the TU companies.
9. Special Prehearing Conference held on June 21, 1978.
10. Special Prehearing Conference Order entered on July 13, 1978, among other things, granted petition to intervene of the TU companies.
11. Prehearing Conference Order Regarding Issues, Discovery and Consolidation entered after a hearing on December 5, 1978, in the Comanche Peak antitrust proceeding (Docket Nos. 50-445A and 50-446A), among other things, consolidated the South Texas Project proceeding with the Comanche Peak proceeding for discovery purposes.
12. Further prehearing conferences held on March 20 and June 1, 1979.
13. Prehearing order issued July 24, 1979, requires all discovery in this proceeding and the Comanche Peak proceeding to be completed by December 31, 1979; final prehearing conference is scheduled for January 3, 1980; trial briefs are to be submitted by January 18, 1980, and an evidentiary hearing is set to commence on February 4, 1980.

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VI.

Nuclear Regulatory Commission
Docket Nos. 50-445A and 50-446A
(Comanche Peak Steam Electric Station)

1. On August 1, 1978, the Department of Justice advised NRC that, in its opinion, changed circumstances required that an antitrust hearing be held on TUGCO's operating license application for CPSES.
2. On August 7, 1978, the NRC published notice of opportunity for interested persons to intervene and request a hearing on the antitrust aspects of the application.
3. Petitions for leave to intervene were filed by CSW (September 6, 1978), the State of Texas and Tex-La Cooperative, Inc. (September 20, 1978).
4. TUGCO responded to the petitions of the State of Texas and CSW on September 21, 1978, and to the petition of Tex-La on October 4, 1978.
5. On November 16, 1978, TUGCO filed a Motion for Partial Consolidation of this proceeding with the antitrust proceeding for the South Texas Project.
6. Special Prehearing Conference held on December 5, 1978.
7. Prehearing Conference Order Regarding Issues, Discovery and Consolidation entered after such hearing, among other things, consolidated this proceeding with the South Texas Project proceeding for discovery purposes.
8. See items 12 and 13 of Section V above.

VII.

Other FERC Proceedings

1. Docket No. E-9593
 - a) Petition filed by CSW subsidiaries on April 27, 1977.
 - b) Petition denied by order of the FPC dated July 5, 1977.
 - c) Motion for rehearing filed by Corporation Commission of Oklahoma on July 22, 1977.
 - d) Motion for rehearing filed by Oklahoma Association of Electric Cooperatives on August 1, 1977.
 - e) Motion for rehearing filed by CSW subsidiaries on August 4, 1977.

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- f) Order issued by the FPC on August 18, 1977, granting rehearing solely for purposes of further consideration.

2. Docket No. E-9578

- a) Petition filed by Tex-La Electric Cooperative, Inc. against TP&L on December 22, 1976.
- b) Petitions to intervene filed by CSW subsidiaries and certain Oklahoma consumers on January 25, 1977.
- c) On October 31, 1977, FERC issued an order instituting an investigation, setting the matter for hearing in 1979, and granting both petitions to intervene, etc.
- d) Prehearing Conference held July 31, 1978.
- e) Order issued November 15, 1978, affirming the procedural schedule and requesting Presiding Judge to submit his recommended decision on Phase I issues.
- f) Initial briefs filed by all parties on October 27, 1978.
- g) Reply briefs filed by same parties on November 20, 1978.
- h) Formal conference held December 8, 1978, to clarify, inter alia, certain matters raised by the briefs.
- i) On February 1, 1979, the ALJ entered Initial Decision on Phase One Issues.
- j) Prehearing conference scheduled for March 7, 1979, to consider Phase II procedures.

3. Docket No. EL79-8

- a) Application by CSW companies tendered for filing on February 9, 1979, pursuant to Section 205 of PURPA, seeking an exemption from three orders of the Texas PUC which allegedly prevent CP&L and WTU from voluntarily establishing or maintaining an electrical interconnection with any utility other than those comprising ERCOT, and also seeking an order of FERC requiring interconnection, wheeling and related relief, etc.
- b) Notice of Application issued by FERC on February 22, 1979.
- c) The TU companies intervened on March 30, 1979.
- d) On July 26, 1979, FERC issued an order instituting an investigation, granting 29 motions to intervene, granting in part and denying in part motions by the TU companies and the Texas PUC to dismiss, and establishing hearing procedures.

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- e) On August 27, 1979, the Texas PUC filed with FERC a motion for rehearing with respect to the Order of July 26, 1979.
- f) On August 27, 1979, the Texas PUC filed with the United States Court of Appeals for the Fifth Circuit a Petition for Review of the FERC Order issued July 26, 1979.
- g) A prehearing conference was held on September 14, 1979, and an order thereon is pending.
- h) FERC denied the Texas PUC motion for rehearing on October 3, 1979, but dismissed CSW's request for relief under Section 205 of PURPA.

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S U M M A R Y

I.

Securities and Exchange Commission Administrative Procedure File No. 3-4951

On March 26, 1974, a motion was filed with the SEC by the Oklahoma Cities of Altus, Frederick, Cordell and Mannford and Verdigris Valley Electric Cooperative and Indian Electric Cooperative, Inc. requesting, among other things, that the SEC undertake a review of the status of Central and South West Corporation ("CSW") and its subsidiaries under the Public Utility Holding Company Act of 1935 ("1935 Act").

On December 31, 1975, CSW filed a memorandum with the SEC reporting on the conclusion of an initial engineering study undertaken by a consulting firm for CSW, PTI Technologies, Inc., which evaluated several alternative modes of future operation of its system, some of which involve interconnecting facilities of the subsidiaries of Texas Utilities Company ("TU") and adjacent utilities, with existing and proposed interstate facilities of CSW.

On January 30, 1976, the SEC issued a Notice of and Order for Hearing relating to the economical operation of the electric utility facilities of the subsidiaries of CSW as a single integrated and coordinated system under the 1935 Act and the various plans referred to in the memorandum. The Notice of and Order for Hearing specifically required that a hearing be held and that evidence be adduced with respect to the following issues:

- I. Whether the electric utility facilities of the subsidiaries of CSW, supplemented as planned or proposed, are capable of being economically operated as a single integrated and coordinated system;

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2. Whether the proposals presented by CSW and its subsidiaries, with any amendments or modifications which may be developed during the proceeding, represent a reasonable prospect of achieving such economical operation, and what contingencies, if any, may affect carrying out any of such proposals.

Initial hearings were held in this proceeding during October, 1976.

On January 7, 1977, TU, as a limited participant in this proceeding, filed a motion requesting that the Administrative Law Judge ("ALJ") find (i) that the subsidiaries of CSW are not being economically operated as a single integrated and coordinated system under the 1935 Act and that the SEC order of February 16, 1945, concluding that the CSW system was an integrated public-utility system under the 1935 Act should be revoked; (ii) that the scope of the hearings should include consideration of an appropriate plan of reorganization or divestiture for the CSW system; and, pending the SEC final order in this proceeding, (iii) that appropriate action should be taken to restrain CSW from taking any action to frustrate the proper exercise of SEC jurisdiction on the part of the ALJ. On the same date, Houston Lighting & Power Company ("HL&P") filed a similar motion.

On January 25, 1977, CSW filed its response to the January 7 motions of TU and HL&P which contained an undertaking by CSW not to make any expenditures to construct or acquire, and not to transfer ownership of, any utility assets the construction, acquisition, or transfer of which would be inconsistent with or unnecessary or inappropriate for future operation of CSW in the mode existing immediately prior to May 4, 1976, without three months' prior notice in writing to the SEC and all other parties and participants in this proceeding.

In February, 1977, after oral argument with respect to the motions of TU and HL&P, such motions were denied by the ALJ, primarily on the basis of lack of jurisdiction by the ALJ. Following an appeal of such action by HL&P and notice of

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an appeal by TU, the Staff of the Commission recommended that the Commission amend its Notice and Order.

On May 18, 1977, the SEC amended its January, 1976 Notice of and Order for Hearing to clarify the scope and purpose of this proceeding, by adding as a third issue for examination, the following:

3. Whether the Commission's determination of February 16, 1945, that the electric utility facilities of C&SW's subsidiaries constituted a single integrated system should be modified or set aside in the event the record in this proceeding does not support a finding now that those facilities are operated as a single integrated system or are capable of such operation under any of the proposals that C&SW has presented to comply with the standards of Section 11(b)(1).

Such amendment further provides as follows:

"The record as to these issues will be the basis for resolving the status of the four operating companies as a single integrated electric system under Section 11(b)(1). If the facilities of the four operating companies are found by the Commission not to constitute a single integrated system and not capable of being operated as such, then (without prejudice to any right of appeal that may exist) a further proceeding with respect to C&SW will be required under Section 11(b)(1). In such proceeding, C&SW will at the outset designate the single integrated system it desires, if at all, to retain as its principal system and specify which, if any, operating utilities it claims as retainable as an additional system or systems under Clauses (A), (B) and (C) of Section 11(b)(1), and which, if any, it proposes to divest pursuant to a plan under Section 11(e)."

HL&P thereafter abandoned its appeal.

Further hearings were had in this proceeding in September, 1977, February and March, 1978 and January, 1979. CSW completed its direct case on January 30, 1979.

On February 24, 1978, the City of Austin, Texas, a party in this proceeding, submitted an "Offer of Settlement" pursuant to Rule 8 of the SEC's Rules of Practice, recommending, among other things, that CSW be granted an exemption under the provisions of Section 11(b)(1) of the 1935 Act whereby it will be permitted

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to control two integrated public utility systems. TU and HL&P submitted memoranda supporting Austin's Offer of Settlement. CSW and the Division of Corporation Regulation of the SEC opposed the Offer of Settlement. The SEC subsequently denied the proposed settlement.

HL&P filed a motion to consider the proposals of Stagg, Inc. in rebuttal to CSW's direct case. On January 30, 1979, the ALJ denied this motion. The SEC reversed the ALJ's decision on July 9, 1979.

TU filed its prepared testimony with the SEC in early July, 1979. Hearings are scheduled to proceed with cross-examination by CSW on October 23, 1979.

II.

Federal Power Commission
(Now Federal Energy Regulatory Commission)
Docket No. E-9558

On May 4, 1976, the four operating utility subsidiaries of CSW (Central Power & Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company), filed a petition and application with the FPC stated to be pursuant to Sections 202(a) and 202(b) of the Federal Power Act, wherein such applicants stated that on May 4, 1976, as a result of a determination that a portion of PSO's load at Davidson, Frederick and Tipton, Oklahoma could be served more economically from the southern part of WTU's system by a 69 kv line from WTU's Vernon Substation, WTU began transmitting and selling electricity for resale to PSO. As a result, the applicants alleged:

"the interconnections between the electrical facilities of PSO and WTU resulted in the transmission of electric energy at wholesale in interstate commerce by all the members of ERCOT and SWPP. Because HL&P, DP&L, TESCO and TP&L each own and operate facilities for such transmission and sale of electric energy, and because none is otherwise exempt from the jurisdiction of the Federal Power Commission, each, like the Applicants, is a public utility within the meaning of the Federal Power Act."

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Based upon such facts as alleged, the applicants requested that the FPC:

- "(1) Conduct such investigations and issue such orders as are necessary and proper under Section 202(a) of the Federal Power Act, to promote and encourage continued and expanded interconnection of facilities for the generation, transmission and sale of energy between members of SWPP and ERCOT;
- (2) Issue such orders under Section 202(b) of the Federal Power Act as may be necessary to continue and maintain the existing interconnections between Petitioners and members of ERCOT; and
- (3) Conduct such investigations and issue such orders under Section 202(b) of the Federal Power Act, as are necessary to establish additional interconnections between members of ERCOT and members of SWPP."

After transmission of electric energy in interstate commerce by WTU on May 4, 1976, TESCO notified the FPC that it had severed all previous interconnections with WTU and CP&L in order to retain within Texas the physical operation of transmitting and selling electric energy generated within the State of Texas.

On May 13, 1976, CP&L and WTU filed with the FPC a Motion for Emergency Interconnection Pursuant to Section 202(c) of the Federal Power Act, seeking an order to require immediate resumption and continuation of all the interconnected service among all of the parties as it was on May 3, 1976.

On July 21, 1976, the FPC issued an order (i) finding that the TU companies and HL&P were not public utilities as defined in the Federal Power Act, (ii) authorizing such companies to reestablish and to maintain temporary connections for emergency purposes without jeopardizing their status under such Act, and (iii) dismissing the petitions filed by the subsidiaries of CSW on May 4 and May 13, 1976. On August 20, 1976, the CSW subsidiaries and certain Oklahoma consumers filed applications for rehearing of the FPC order of July 21, 1976, which applications were denied on September 17, 1976.

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Thereafter, the CSW subsidiaries and Oklahoma consumers filed with the United States Court of Appeals for the District of Columbia Circuit petitions for review of the July 21, 1976 order of the FPC. The TU companies, HL&P and several other Texas utilities intervened in this proceeding. Briefs were filed by all the parties, and oral argument was had on February 20, 1978.

On April 10, 1978, the Court of Appeals rendered its decision in this proceeding remanding to the Federal Energy Regulatory Commission ("FERC") for clarification the July 21, 1976 order of the FPC. The Court did not consider the merits of the issue before it, but simply concluded that the FPC's order was confusing as to whether it had no jurisdiction over the TU companies and HL&P as a matter of law or whether through the exercise of discretion, it simply declined to exercise it. The Court's opinion concluded:

"We do not say the result reached by the Commission is contrary to law. What we do say is that the FERC has not complied with its obligation to articulate its reasoning. We therefore remand for clarification of that reasoning. In the event exercise of discretion is involved, as was put to us in support of this order, it must be accompanied by some indication in the record that all relevant factors were taken into account."

On April 24, 1978, the TU companies filed a Petition for Rehearing and Alternatively Suggestion for Rehearing En Banc in this proceeding, which was denied by the Court on May 27, 1978.

On August 24, 1978, the TU companies filed with the U. S. Supreme Court a petition for writ of certiorari to review the judgment and opinion of the Court of Appeals, requesting that the Supreme Court reverse the decision of the Court of Appeals and direct it to sustain the FERC's determination that it is without jurisdiction over the TU companies, as a matter of law, which writ was denied by the Supreme Court in November, 1978. The decision of the Court of Appeals remanding the July 21, 1976 order to FERC for clarification stands; however, no action has been taken to date by FERC with respect thereto.

III.

WTU and CP&L v. TESCO and HL&P
U. S. District Court for the Northern District of Texas

On May 3, 1976, WTU and CP&L filed a complaint against TESCO and HL&P in the U. S. District Court for the Northern District of Texas, Dallas Division, seeking a decree that continued operation under the intrastate covenant of the TESCO-WTU 1938 contract, as amended, is in violation of the federal antitrust laws and generally to require TESCO and HL&P to operate interconnected with the interstate facilities of WTU and CP&L.

After WTU commenced interstate operation through interconnection with PSO on May 4, 1976, and the TU system and HL&P disconnected from the CSW companies, WTU and CP&L's motion for a temporary restraining order requiring reconnection was denied by the Court.

Both TESCO and HL&P, as well as the Plaintiffs, filed motions for summary judgment, all of which were denied by the Court on June 14, 1977. On such date, the Court also denied the Plaintiffs' motion for leave to file an amended complaint.

Trial took place in this suit during the months of October and November, 1978. On January 30, 1979, the Court issued a Memorandum Opinion, and on February 27, 1979, rendered judgment, holding, among other things, that Defendants had not violated the federal antitrust laws and that it would not be in the public interest to force the Defendants to interconnect in interstate commerce.

Plaintiffs filed a motion for rehearing and a stay which was denied by the Court on May 15, 1979.

WTU and CP&L thereafter appealed this judgment to the U. S. Court of Appeals for the Fifth Circuit. Appellants' brief is due November 5, 1979.

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IV.

Public Utility Commission of Texas
Docket No. 14

After being informed that WTU had connected service across the Oklahoma state line and that the TU companies and HL&P had disconnected from the Texas Interconnected System ("TIS") because of this, the PUC called an emergency hearing for May 7, 1976, at which all members of TIS were represented. At the conclusion of this hearing, the PUC found that the interest of the public required the immediate reestablishment of an intrastate interconnected system among the companies which wished to continue to operate intrastate only and issued an interim order requiring, among other things, those members of the TIS wishing to remain in intrastate commerce to commence negotiations immediately for the reestablishment of an intrastate interconnected system, and directing all parties to advise the PUC by May 21, 1976, of the steps taken in this regard. Following receipt of responses from all parties, the PUC, on May 24, 1976, found, among other things, that a Texas intrastate interconnect system had been reestablished by the reconnection of HL&P and the TU companies and issued a final order permitting, among other things, the reconnection of the other members of TIS with such intrastate system provided any such reconnection did not put the intrastate system into interstate commerce.

On January 7, 1977, DP&L, TESCO and TP&L filed a motion with the PUC requesting that the PUC enter an order requiring WTU and CP&L (i) to appear and show cause why they should not be ordered to return to the pre-May 4, 1976 mode of operation and, pending final outcome of the proceeding, (ii) to cease implementing any plans which would facilitate in any manner interconnected operation with any electric utility outside of the State of Texas. The motion

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alleged that unless the requested order were issued, the conduct of WTU and CP&L may frustrate the proper exercise of PUC jurisdiction and cause irreparable injury to, and result in a significant adverse impact upon, all electric utilities in the State of Texas and their customers. HL&P, LCRA and others also filed similar motions.

Numerous prehearing conferences were held from January 25, 1977 to May 2, 1977, by which the PUC attempted to arrange the voluntary disconnection, at their request, of LCRA, City of Austin and CPSB of San Antonio from CP&L/WTU and reconnection with HL&P and the TU companies. On April 25, 1977, WTU and CP&L announced that they refused the requests of Austin, LCRA and CPSB.

At a hearing held on May 2, 1977, the PUC entered an Interim Order in effect requiring all parties to return to the pre-May 4, 1976, mode of operation and WTU to sever its interstate tie into Oklahoma.

On June 2, 1977, following a full hearing, the PUC issued its Final Order which, among other things, confirmed its Interim Order. On July 11, 1977, following a hearing on various motions for rehearing, the PUC entered an Amended Final Order which clarified but did not substantively change its June 2 Final Order. On July 22, 1977, CP&L and WTU filed a motion for rehearing of the Amended Final Order which was denied.

In May, 1977, CP&L and WTU instituted a statutory appeal to the District Court of Travis County, Texas, seeking to set aside the Interim Order issued by the PUC on May 2, 1977. The Plaintiffs' petition was amended on August 2 and September 16, 1977, seeking to set aside the Amended Final Order entered by the PUC on July 11, 1977, and the Interim Order as incorporated therein. The TU companies and HL&P intervened as Defendants in this proceeding in October, 1977. Oral argument was held before the Court on December 4, 1978, and a decision is

pending.

In May, 1977, CP&L and WTU also filed a complaint against the PUC in the U. S. District Court for the Western District of Texas, Austin Division, seeking a declaratory judgment that the Interim Order entered by the PUC is void. On July 29, 1977, CP&L and WTU amended their complaint to seek a declaratory judgment that the Amended Order of July 11, 1977, and the Interim Order as incorporated therein, is void. In October, 1977, the TU companies and HL&P intervened as Defendants in this appeal. In early May, 1978, the United States and the Federal Energy Regulatory Commission intervened as Plaintiffs therein. Upon the motion of the Defendant PUC, joined in by the TU companies, HL&P and other parties which intervened as Defendants, the Court, on May 11, 1978, dismissed the appeal without prejudice to the refiling thereof after the Texas courts have addressed the state law questions in the case. WTU and CP&L appealed this decision to the United States Court of Appeals for the Fifth Circuit. Following the filing of briefs by all parties and intervenors, the Court of Appeals, on March 28, 1979, affirmed the decision of the U. S. District Court. No appeal has been taken therefrom.

V.

Nuclear Regulatory Commission
Docket Nos. 50-498A and 50-499A
(South Texas Project)

CP&L is one of four holders of a joint license issued by the Nuclear Regulatory Commission to construct the South Texas Project, a two-unit nuclear generating station near Bay City, Texas. CP&L, on June 4, 1976, filed a petition to intervene and request for hearing out of time with the NRC, requesting the NRC to conduct an antitrust hearing as a part of construction permit proceedings for the South Texas project. A Licensing Board of the NRC granted CP&L's request and

ordered a hearing. Upon appeal, the Atomic Safety and Licensing Appeal Board, by its Decision dated March 18, 1977, reversed the order granting a hearing and directed that CP&L's petition be dismissed for lack of jurisdiction. CP&L sought and was denied an extension of time to seek reconsideration of the Safety and Licensing Board's order and a request for reconsideration was subsequently denied. Review by the NRC is discretionary and on March 31, 1977, it announced that it had decided not to review the decision of the Safety and Licensing Appeal Board. On May 18, 1977, CP&L petitioned the United States Court of Appeals for the District of Columbia Circuit to review the NRC orders and remand the cause to the NRC with directions to hold a prompt hearing on the antitrust issues raised by CP&L. HL&P intervened in this appeal.

HL&P, a co-holder of the permit for the construction of the South Texas Project, filed a request on February 10, 1977, with the NRC for a waiver of an NRC rule which would permit the NRC Staff to initiate the operating license antitrust review for the South Texas Project under section 105(c) of the Atomic Energy Act of 1954, as amended. CP&L, in response to the request for waiver, urged that the NRC Commissioners should order a hearing with respect to the antitrust issues raised by its petition to intervene outside the confines of an operating license review under section 105(c) of the Atomic Energy Act of 1954, as amended. The NRC entered an order on June 15, 1977, in which it declined to direct a hearing, granted HL&P's request for waiver and directed the NRC Staff to seek the further advice of the Department of Justice with respect to the operating license antitrust review for the South Texas Project. On July 26, 1977, CP&L petitioned the United States Court of Appeals for the District of Columbia Circuit to review the June 15, 1977 order of the NRC and remand the cause to the NRC with directions to hold a

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prompt hearing on the antitrust issues raised by CP&L. CP&L also moved to consolidate this petition for review with the petition for review filed by it on May 18, 1977. The two petitions for review have been consolidated and briefs have been filed by the parties.

By letter dated February 21, 1978, the Department of Justice, in response to the request of the NRC Staff pursuant to the above-mentioned Order of June 15, 1977, rendered the requested advice, indicated that the intrastate provisions of agreements among TIS members may raise serious antitrust issues, and concluded that changed circumstances required that an antitrust hearing be held on the operating license application. Thereafter, a Notice of Antitrust Hearing on Operating License Application was published in the Federal Register on April 14, 1978. TUGCO, DP&L, TESCO and TP&L filed a petition to intervene in this proceeding on April 28, 1978. By Answer, dated May 16, 1978, the NRC Staff opposed the petition to intervene filed by the TU companies.

On May 17, 1978, the Atomic Safety & Licensing Board issued a Notice of Special Prehearing Conference in this proceeding to be held on June 21, 1978. Pursuant to the Special Prehearing Conference Order following such hearing entered on July 13, 1978, among other things, the intervention petitions of the TU companies were granted.

Pursuant to the Prehearing Conference Order Regarding Issues, Discovery and Consolidation entered after a hearing on December 5, 1978, in the Comanche Peak antitrust proceeding, among other things, the South Texas Project proceeding was consolidated with the Comanche Peak proceeding for discovery purposes.

Further prehearing conferences were held on March 20 and June 1, 1979. The prehearing order issued July 24, 1979, now requires all discovery in this proceeding

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and the Comanche Peak proceeding to be completed by December 31, 1979. A final prehearing conference is scheduled for January 3, 1980. Trial briefs are to be submitted by January 18, 1980, with an evidentiary hearing set to commence on February 4, 1980.

VI.

Nuclear Regulatory Commission
Docket Nos. 50-445A and 50-446A
(Comanche Peak Steam Electric Station)

On August 1, 1978, the Department of Justice advised the NRC that, in its opinion, changed circumstances required that an antitrust hearing be held on TUGCO's operating license application for Comanche Peak. On August 7, 1978, the NRC published notice of opportunity for interested persons to intervene and request a hearing on the antitrust aspects of the application.

Petitions for leave to intervene were filed by CSW (September 6, 1978), the State of Texas and Tex-La Cooperative, Inc. (September 20, 1978). TUGCO responded to the petitions of the State of Texas and CSW on September 21, 1978, and to the petition of Tex-La on October 4, 1978.

On November 16, 1978, TUGCO filed a Motion for Partial Consolidation of this proceeding with the antitrust proceeding for the South Texas Project. A Special Prehearing Conference was held on December 5, 1978. The Prehearing Conference Order Regarding Issues, Discovery and Consolidation entered after such hearing consolidated this proceeding with the South Texas Project proceeding for discovery purposes.

Further prehearing conferences were held on March 20 and June 1, 1979. See Section V above with respect to the South Texas Project proceeding for information regarding discovery schedule, briefing schedule and trial setting.

The TU companies have responded to interrogatories and document production requests of the Department of Justice, NRC Staff, CP&L and City of Brownsville. Depositions are now in progress.

VII.

Other FERC (FPC) Proceedings

Various other motions and petitions are pending seeking relief substantially the same as that sought in the May 4, 1976 and May 13, 1976 petitions of the CSW subsidiaries, as follows:

1. Docket No. E-9593. On April 27, 1977, CP&L, PSO, SWEPCO and WTU filed an Emergency Petition for Proceedings and Joint Hearings Pursuant to Sections 307 and 209(B) of the Federal Power Act, requesting that the Commission initiate a proceeding to conduct joint hearings with the Public Utility Commission of Texas concerning the question of intrastate and/or interstate service of Texas interconnected public utility systems raised by the motions filed with the Texas PUC by HL&P and the TU companies on January 7, 1977. This petition was denied by order of the Commission dated July 5, 1977. On July 22, 1977, the Corporation Commission of the State of Oklahoma filed an application for rehearing of the July 5 order, claiming that in its petition to intervene, in addition to its request for intervention, it requested the Commission to institute an investigation pursuant to Section 207 of the Federal Power Act "to determine whether or not adequacy or sufficiency of service to the people of the State of Oklahoma has been affected by the recent disconnection of service between WTU and PSO." The Corporation Commission stated that the FPC failed to address this request in its July 5 order. On August 1, 1977, the Oklahoma Association of Electric Cooperatives filed an application for rehearing for the same reason, among others, stated by the

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Corporation Commission. On August 4, 1977, the CSW subsidiaries applied for rehearing of the order for the same reason as the Corporation Commission. On August 18, 1977, the FPC issued an order granting rehearing solely for the purposes of further consideration. However, no action has been taken by FERC subsequent to the issuance of this order.

2. Docket No. E-9578. On December 22, 1976, Tex-La Electric Cooperative, Inc. filed a petition with the FPC, requesting the Commission to commence an investigation to determine whether TP&L engages in interstate commerce, and to determine whether TP&L's wholesale sales are subject to the jurisdiction of the Texas PUC or the jurisdiction of the FPC, alleging that TP&L receives energy from the Denison Dam, and the "Denison Dam is located in Oklahoma and Texas." On the same date Tex-La filed a similar petition with the Texas Public Utility Commission. Tex-La represents 14 rural electric cooperatives engaged in the distribution and sale of electric power and energy. Tex-La purchases power and energy for the use and benefit of its member cooperatives from TP&L pursuant to a contract dated June 12, 1973. On January 25, 1977, the subsidiaries of CSW and certain Oklahoma consumers filed petitions to intervene in this proceeding. TP&L filed answers asserting that the Tex-La petition should be denied because no jurisdictional interstate energy had been transmitted into or out of the TU system. On October 31, 1977, FERC (successor to the FPC) issued an order instituting an investigation, setting the matter for hearing in 1979, and granting both petitions to intervene.

At a prehearing conference on July 31, 1978, it was agreed that the scope of an evidentiary hearing which might be required would be influenced to a major extent by the answers to certain underlying legal questions. The parties consented

to filing briefs on six specified legal questions which the Judge would then certify to the Commission for resolution. By order issued November 15, 1978, the Commission affirmed the procedural schedule and requested the Presiding Judge to submit his recommended decision with the certification.

The FERC Staff, TP&L, Tex-La and CSW filed initial briefs on October 27, 1978. Reply briefs were filed by the same parties on November 20, 1978. At the direction of the Judge, a formal conference was held on December 8, 1978, to clarify, inter alia, certain matters raised by the briefs. Further pleadings required by the Judge were filed on January 4 and 5, 1979.

On February 1, 1979, the ALJ entered his Initial Decision on Phase One Issues, ruling on most of such issues in a manner favorable to TP&L.

On February 2, 1979, the ALJ scheduled for March 7, 1979, a prehearing conference to consider the Phase II procedures, if any, which should be adopted while the Phase I initial decision in this proceeding is pending before the Commission.

3. Docket No. EL79-8. On February 9, 1979, CP&L, PSO, SWEPCO and WTU ("CSW") tendered for filing, pursuant to Section 205 of the Public Utilities Regulatory Policies Act of 1978 ("PURPA"), an application for exemption from three orders of the Texas PUC which allegedly prevent CP&L and WTU from voluntarily establishing or maintaining an electrical interconnection with any utility other than those comprising ERCOT. (See Section IV above.) CSW also requests an order of FERC requiring interconnection, wheeling and related relief under Sections 202(b), 210, 211 and 212 of the Federal Power Act, as amended, stating that the relief sought would involve interconnections between the respective CSW systems with the TU companies, HL&P and other ERCOT members

and with SWPP.

On February 22, 1979, FERC issued a Notice of Application, requiring any person desiring to be heard or to protest said application to file a petition to intervene or protest with FERC on or before March 30, 1979.

DP&L, TESCO and TP&L intervened on March 30, 1979.

On July 26, 1979, FERC issued an order instituting an investigation, granting 29 motions to intervene, granting in part and denying in part motions by the TU companies and the Texas PUC to dismiss, and establishing hearing procedures.

In August, 1979, the Texas PUC filed with FERC a motion for rehearing of the July 26, 1979 order, and on August 27, 1979, filed with the U. S. Court of Appeals for the Fifth Circuit a Petition for Review of such order. The TU companies have intervened in this proceeding.

On October 3, 1979, FERC denied the Texas PUC's motion for rehearing, but also denied CSW's request for relief under Section 205 of PURPA.

A prehearing conference in the FERC proceeding was held on September 14, 1979, and an order thereon is pending.

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

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

CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing Response of Texas Utilities Company and its Subsidiary Companies to the NRC Staff's Supplemental Request for Production of Documents has been made on the following parties listed hereto this 16th day of October, 1979, by depositing copies thereof in the United States mail, first class, postage prepaid:

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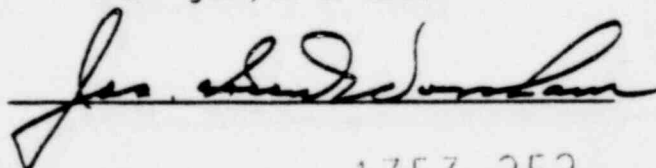
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