

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

In the Matter of )  
 )  
TEXAS UTILITIES ELECTRIC COMPANY ) Docket No. 50-446A  
 )  
(Comanche Peak Steam )  
Electric Station, Unit 2) )  
\_\_\_\_\_ )

COMMENTS OF  
CAJUN ELECTRIC POWER COOPERATIVE, INC.,  
ON ANTITRUST INFORMATION FILED BY  
TEXAS UTILITIES ELECTRIC COMPANY  
PURSUANT TO REGULATORY GUIDE 9.3

Cajun Electric Power Cooperative, Inc. ("Cajun"),  
pursuant to the Nuclear Regulatory Commission's ("Commission" or  
"NRC") notice issued February 14, 1992, 57 Fed. Reg. 6340  
(February 24, 1992), of receipt of antitrust information filed by  
Texas Utilities Electric Company ("TU Electric") in the above-  
referenced docket, files these Comments and states as follows:

I. BACKGROUND

TU Electric is currently the majority owner and  
operator of the Comanche Peak Steam Electric Station ("CPSES"),  
Units 1 and 2, over which the Commission exercises antitrust  
review responsibilities according to Section 105 of the Atomic  
Energy Act of 1954 ("AEA"). The Commission issued a construction  
permit for CPSES, Units 1 and 2, in December 1974, with certain  
antitrust license conditions. The antitrust conditions were  
imposed because of allegations, which were examined by the

Department of Justice, that TU Electric's<sup>1/</sup> dominant market position in generation and transmission restrained the competitive alternatives of other power systems in Texas. See Department of Justice advice letter to Atomic Energy Commission, dated January 17, 1974.

On June 21, 1978, at the operating license stage of review, the Commission issued a "significant change" finding, according to Section 105c(2) of the AEA, seeking the advice of the Department of Justice on the antitrust aspects of TU Electric's activities related to the operating license for CPSES. See 7 N.R.C. 950 (1978). The significant changes in circumstances related to TU Electric's efforts, in concert with Houston Lighting & Power Company, to isolate the Texas electric bulk power market from interstate commerce by opening their interconnections with another Texas utility, Central Power & Light Company ("Central"), when Central sought to interconnect its operations with affiliated companies located outside the Electric Reliability Council of Texas ("ERCOT").

On August 1, 1978, the Department of Justice recommended an antitrust hearing, stating:

[B]ecause of [TU Electric's] and HL&P's adherence to a policy of intrastate only operations in light of the present market circumstances, and considering the unprecedented disruptive action of disconnection undertaken by applicant and HL&P to enforce this policy and agreement, an antitrust hearing is necessary to determine whether additional conditions should be

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1/ At the time TU Electric was known as Texas Utilities Generating Company.

attached to the operating license of Comanche Peak....

Department of Justice letter dated August 1, 1978, at 3-4. Following this recommendation of the Department of Justice, the Commission convened an antitrust hearing and consolidated it with a proceeding examining HL&P's South Texas Project, Units 1 and 2, Docket No. 50-498A, et al.

Following extensive litigation before the Commission, the Federal Energy Regulatory Commission ("FERC") and the Securities and Exchange Commission ("SEC"), TU Electric, HL&P, Central and other parties reached several settlement agreements. As reflected in the Memorandum and Order issued on May 6, 1982, by the Commission's presiding administrative law judge, a portion of the settlements involved additional antitrust conditions on CPSES. See 15 N.R.C. 1143 (1982). The May 6, 1982 Order made the license conditions effective immediately. Id. The license conditions were designed to preclude TU Electric (or HL&P) from acting in concert with any other entity to disconnect from interstate power systems.

At the forefront of the settlement was the provision for the construction of two direct current asynchronous transmission lines ("DC ties") interconnecting utilities in ERCOT with utilities located in the Southwest Power Pool ("SWPP"). See, e.g., Central Power and Light Co., 17 FERC ¶ 61,078 (1981), order on reh., 18 FERC ¶ 61,100 (1982) ("FERC Original Order"). These two DC ties have been known as the "North DC Tie" and the "South DC Tie." The North DC Tie was placed in service late in 1984. Subsequently, HL&P and others filed a petition with FERC

seeking to delay and redefine the remaining interconnection as the East DC Tie, and to allow TU Electric to participate as an owner of the East DC Tie. See Central Power & Light Co., 40 FERC ¶ 61,077 (1987). In FERC's Order granting the petition, FERC stressed the requirement that TU Electric, among others, "permit other utilities to participate in the construction and ownership of the East [DC Tie]." 40 FERC at 61,221. The East DC Tie was to be in place no later than August 31, 1991.

On August 22, 1991, TU Electric and other East DC Tie owners<sup>2/</sup> ("Petitioners") filed a petition at FERC for an extension of time to construct the East DC Tie. The Petition requested that installation of the full 600 MW of capacity on the East DC Tie be delayed until August 1998, with 300 MW being installed by August 1995. The proposed draft order stated that the East DC Tie may be delayed even further due to "reasonable contingencies, such as delays in complying with the environmental requirements of this Order...." See Central Power and Light Co., 57 FERC ¶ 63,317 (1991). Cajun filed a motion to intervene in the proceeding.

Cajun is a generation and transmission cooperative comprised of thirteen distribution cooperatives ("Members") in Louisiana. Cajun stated that it has surplus capacity and energy

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2/ The East DC Tie owners include the following entities in addition to TU Electric and HL&P: Central Power and Light Company ("Central") and Southwestern Electric Power Company ("SWEPCO"). The North DC Tie owners include Public Service Company of Oklahoma ("PSO") and West Texas Utilities Company ("West Texas"). Central, SWEPCO, PSO and West Texas are all operating companies of the Central & South West Corporation ("CSW").

which it could market to interested purchasers located within the ERCOT region

On November 6, 1991, Petitioners filed at FERC a proposed draft "Order Granting Petition" providing Petitioners the relief sought in their Petition. Cajun responded to the Petitioners' proposed order by presenting to FERC Cajun's concerns regarding the requested relief. In its response, Cajun stated, inter alia, that Cajun's ability to market surplus capacity to interested purchasers which are ERCOT members is directly affected by the construction and commercial operation date of the East DC Tie.

On December 6, 1992, the FERC issued an order granting, with modifications, Petitioners' request for an extension of time to complete the DC Tie, and stated that Cajun's concerns were not properly addressed in the context of the petition for an extension of time. Id. ("December 6th Order").

## II. TU ELECTRIC RESPONSE TO REGULATORY GUIDE 9.3

On December 5, 1991, the Commission Staff requested certain antitrust information from TU Electric in accordance with Commission Regulatory Guide 9.3. See Staff letter dated December 5, 1991. The Staff letter indicates that an antitrust review is appropriate at this time in light of the scheduled December 1992 fuel load for CPSES Unit 2 and the length of time since the antitrust review of CPSES Unit 1, which was completed in September 1989.

By letter dated February 5, 1992, TU Electric responded to the Staff's request for information in accordance with

Regulatory Guide 9.3. TU Electric stated that in April 1991 it submitted to regional electric utilities requests for responses directed to potential alternatives to generation which TU Electric was seeking to have certified. See TU Electric Filing at 23-24. According to TU Electric's filing, Cajun responded by indicating that it was interested in discussing the sale of capacity and energy to TU Electric. Id. Representatives of Cajun and TU Electric met on February 25, 1992, to discuss capacity sales in Texas.

Further, under a section entitled "Communications Related to DC Asynchronous Connections", TU Electric discusses, inter alia, the attempts by it and the other East DC Tie owners to defer the completion date of the East DC Tie, and Cajun's pleadings at FERC related to that request. Id. at 35-38. TU Electric states that Cajun's pleadings, while not opposing the East DC Tie owners' joint request for an extension of time to complete the East DC Tie, did indicate two concerns about the extension, namely: (1) the 500 MW maximum system load criterion to be a qualifying utility eligible to reserve transmission service utilizing the East DC Tie, since Cajun has a peak load in excess of 500 MW; and (2) the procedures by which other entities, including Cajun, may become participants in the East DC Tie.

TU Electric indicates that the FERC, in its December 6th Order, granted in part the petitioners' request for an extension of time. See 57 FERC at 62,030-31. TU indicates that the FERC also stated in its order that Cajun concerns about participation in the East DC Tie were beyond the scope of the



FERC proceeding, and recommended that Cajun file a complaint if it felt the FERC's prior orders were not being properly implemented.

On February 14, 1992, this Commission issued a notice of receipt of the TU Electric antitrust information, and established 30 days from the notice as the time for the filing of Comments.

### III. COMMENTS

While Cajun did not oppose the Petitioners request to FERC for an extension of time to complete the East DC Tie, Cajun has concerns about the delays that have occurred in the completion of the second DC Tie between the ERCOT and SWPP regions, i.e., the East DC Tie. Cajun notes that the first DC Tie (i.e., the North DC Tie) was completed in 1984. The operation of the North DC Tie, which is limited currently to 220 MW, apparently allowed CSW to demonstrate to the SEC that it was an integrated electric system within the meaning of the Public Utility Holding Company Act. See "Memorandum and Order Terminating Proceeding," issued on April 1, 1982, SEC File No. 3-4951. Cajun is concerned that the original impetus to greater interconnections between ERCOT and SWPP has been stymied.

The record shows that the second DC Tie has experienced continuing delays. Since September 1989, when the most recent antitrust review by Commission Staff was conducted, the date of the full 600 MW completion of the East DC Tie has been extended to 1998 (with 300 MW to be completed in 1995). In this regard, Cajun notes that the FERC rejected the Petitioners' request that

the East DC Tie could be delayed even beyond August 1998 due to "reasonable contingencies." See FERC's December 6th Order, 57 FERC at 62,030, and page 4, supra. Cajun is interested in the timely completion of the East DC Tie.

Moreover, Cajun is concerned about the requirement that entities qualified to reserve transmission service over the DC Ties be limited to entities with a peak load of less than 500 MW. See TU Electric Filing at 37. Cajun is a generation and transmission cooperative with thirteen Members, and is the exclusive power supplier for each of its Members. Each of Cajun's Members has a peak load under 500 MW. In its December 6th Order, the FERC denied Cajun's request to clarify Cajun's status in that proceeding, and stated that Cajun should file a request for relief if Cajun wanted a FERC order on that issue. Cajun has not yet filed a request for relief on its status as a qualifying utility with the FERC. Cajun is not at this time requesting any relief from this Commission on this issue.

Further, Cajun is interested in the option of participation in the East DC Tie as an owner, in addition to, or in place of, utilizing the reserved transmission capacity. Cajun notes that CPSES operating license conditions include the following requirements:

The Applicants shall participate in and facilitate the exchange of bulk power by transmission between or among two or more Entities in the North Texas Area ... and any Entity(ies) outside the North Texas Area between whose facilities the Applicants' transmission lines, including any direct current (asynchronous) transmission lines, form a continuous electrical path....



\* \* \* \* \*

If Applicants engage in joint ownership of transmission lines with any other Entity they shall not refuse to engage in similar transactions in comparable circumstances with other Entities....

\* \* \* \* \*

Applicants shall provide other Entities with reasonable access to any future interstate interconnection facilities which Applicants may own....

Antitrust License Condition for Comanche Peak Steam Electric Station Units 1 and 2, ¶¶ 3.D.2(i), 3.D.2(j)(a) and 3.D.2(j)(b), respectively.<sup>3/</sup> However, since TU Electric became a participant in the East DC Tie in 1986, no other entities have been allowed to become participants, despite the fact that Cajun has indicated, since at least July 25, 1989, that Cajun is interested in meeting to discuss ownership. See Cajun's July 25, 1989, Reply to Solicitation offered by Petitioners, attached as

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3/ In this regard, Cajun notes that the 1981 FERC Original Order states that:

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

Attachment A. Cajun notes that a meeting among representatives of Cajun, the CSW Operating Companies, HL&P and TU Electric occurred on December 11, 1991, to explore this matter.

Cajun is exploring the option of ownership in the East DC Tie, and is interested in developing a working relationship with the East DC Tie owners. As TU Electric states in its filing, Cajun has not filed a complaint with the FERC. See TU Electric filing at 38. Cajun respectfully suggests that the Commission review in this proceeding, the opportunities and procedures whereby interested utilities may participate in the East DC Tie, pursuant to CPSES License Conditions Paragraphs 3.D.2(i) and (j).

These procedures should be clarified in at least two respects. First, the participation contemplated by the CPSES Antitrust Conditions should be initiated by any interested utility in the ERCOT or SWPP regions, and not merely by the Petitioners. Second, such participation should provide a forum for regional planning of transmission, with the focus on the capacity in the DC Ties.

Cajun's comments reflect the intent of the Commission's Orders to permit other utilities to participate in the ownership of the East DC Tie and to increase opportunities for transfers between ERCOT and SWPP.

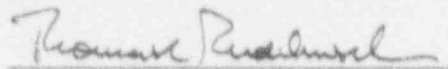
#### IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Cajun Electric Power Cooperative, Inc., respectfully requests that the Commission consider the foregoing information in its

consideration of whether significant changes have occurred since the previous antitrust review and, further, clarify the procedures under which interested utilities may participate in ownership of the East DC Tie, consistent with the CPSES License Conditions.

Dated: March 25, 1992

Respectfully submitted,



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Charles A. Braun  
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Attorneys for Cajun Electric Power  
Cooperative, Inc.

ATTACHMENT A

REPLY TO SOLICITATION

DATE: July 25, 1989

Mr. James A. Bruggeman  
Vice-President, System Engineering  
Central and South West Services, Inc.  
P. O. Box 660164  
Dallas, Texas 75266-0164

Cajun Electric Power Coop., Inc. is interested in participating, pursuant to the orders in FERC Docket EL79-8, E-9558 and EL79-8-002, in the planning and ownership of an increase in the capacity of the 200 megawatt nominal capacity direct current asynchronous interconnection between Public Service Company of Oklahoma and West Texas Utilities Company at Oklaunion, Texas, described in the letter of June 30, 1989 from Merle L. Borchelt, Chairman and Chief Executive Officer of Central and South West Services, Inc.

Cajun will attend a meeting of interested parties to be scheduled by Central and South West Services, Inc. and will be represented at that meeting by Resal Craven.

Please forward all further communications regarding the meeting of interested parties and the planning of any expansion to:

Cajun Electric Power Cooperative, Inc.

P.O. Box 15540

Baton Rouge, Louisiana 70895

Attention of: R. A. Craven

RECEIVED

JUL 31 1989

POWER SYSTEM PLANNING

By:

Phillip G. Harris

Vice President-Operations

Title