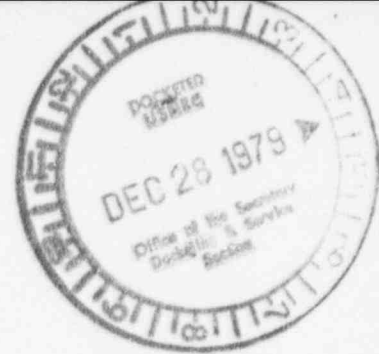


UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD



In the Matter of)
)
HOUSTON LIGHTING & POWER COMPANY,) Docket Nos. 50-498A
et al.) and 50-499A
)
(South Texas Project, Units No.)
1 and 2))
)
)
)
)
)

In the Matter of)
)
TEXAS UTILITIES GENERATING COMPANY,) Docket Nos. 50-445A
et al.) and 50-446A
)
)
(Comanche Peak Steam Electric)
Station, Units No. 1 and 2))
)

RESPONSE OF THE PUBLIC UTILITIES BOARD OF THE CITY
OF BROWNSVILLE, TEXAS TO MOTION TO QUASH
OF CENTRAL AND SOUTH WEST CORPORATION

On December 21, 1979 Central & South West Corporation ("C&SW") and Mr. S. B. Phillips, Jr., filed a Motion to Quash Notice of Deposition and Response to Motion to Compel Deposition. They thus seek to avoid the deposition in this proceeding of Mr. S. B. Phillips, Jr., Chairman of the Board and Chief Executive Officer of C&SW. This deposition was duly noticed by the Public Utilities Board of the City of Brownsville, Texas ("Brownsville") on November 23, 1979; was postponed by agreement until a mutually convenient future date; and was the subject of Brownsville's Motion to Compel Deposition on December 13, 1979. Brownsville hereby

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files its response to C&SW's Motion to Quash, and requests the Board to order Mr. Phillips to be produced promptly for deposition. 1/

None of the reasons given in C&SW's Motion to Quash is persuasive. C&SW primarily asserts that Mr. Phillips' deposition will be duplicative of the depositions of officers of Central Power & Light Company ("CP&L"). First of all, this should not make any difference. Brownsville is entitled to explore the same set of facts with each person who has knowledge of them. One person may well have knowledge in detail that another lacks, or the two versions of the facts may differ. Brownsville is entitled to find this out, as part and parcel of the discovery process. 2/

Secondly, the fact that Mr. Phillips is the Chairman of the Board and Chief Executive Officer of C&SW enables Brownsville and this Board to presume that his knowledge of the facts is different from that of officers of CP&L. As the attached documents suggest, C&SW has at times been aware of the activities of CP&L. Brownsville is entitled to explore the possibility that C&SW acquiesced in

1/ To the extent that C&SW's pleading is filed under 10 C.F.R. §2.740(c) as a motion for protective order, the instant filing constitutes Brownsville's response. To the extent that C&SW's pleading was a response to Brownsville's Motion to Compel, Brownsville renews the request made in its Motion to Compel for leave to reply, pursuant to 10 C.F.R. §2.730(c), and files this pleading concurrently as a Reply.

2/ At trial, C&SW could hardly object if Brownsville asked the same question to more than one witness. Yet apparently C&SW feels that Brownsville's inquiry into "identical subjects" on the part of several deponents is probative of something. Motion to Quash, pp. 2-3. It merely shows Brownsville is trying to prepare its case thoroughly.

or took an active role in activities reflected in these and other documents. 1/ Brownsville would also note that, to its knowledge, no officer of C&SW has yet been deposed in connection with this proceeding. 2/

C&SW also objects in advance to the kinds of questions it thinks Brownsville will ask Mr. Phillips. Motion to Quash, p. 4. As a general rule, the Board should only entertain these specific objections if and when Brownsville poses these questions. 3/ C&SW apparently would object questions eliciting to "on the record commitments or statements of policy from Mr. Phillips." Motion to Quash, p. 4. The current policies of C&SW (and of CP&L, to the extent Mr. Phillips is aware of them) on transmission rates and services, interconnections, jointly-

1/ C&SW does not challenge the adequacy of the subject matter description included in the Notice of Deposition. Yet it complains that counsel for Brownsville did not provide "specific justification" for Mr. Phillips' deposition. Motion to Quash, p. 3. C&SW counsel was informed that questions related to specific documents might be asked, although the documents were not provided in advance. C&SW is not entitled to a list of specific questions in advance of the deposition.

2/ Depositions of Mr. Phillips, Mr. Harris, and Mr. Wells (also officers of C&SW) were noticed in October, 1979, by Houston Lighting & Power Company and Texas Utilities Company, but were cancelled by agreement.

3/ CP&L interpreted the "settlement negotiations" privilege very broadly in the deposition of Mr. William C. Price, a vice-president of CP&L. (October 2, 1979). Once Brownsville has reviewed this transcript and determined that the assertions made by C&SW here are comparable, it may seek further guidance from the Board. C&SW's vague assertion of the settlement negotiation privilege here raises the additional issue of whether the parent company, C&SW, may assert privilege of knowledge of negotiations between Brownsville and the subsidiary, CP&L (assuming there are any such legitimately privileged negotiations).

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owned generating units, and the structure of organizations such as the Texas Interconnected System, are as relevant to the statutory standard enforced by this Commission as any past policies of C&SW and CP&L in these areas. Brownsville is entitled to get present policies on record.

Brownsville's Motion to Compel requested Mr. Phillips' deposition take place on January 8, 1980. This date may become inconvenient or impossible depending on the date of the Board's decision as well as on scheduling conflicts that may arise. In this event, the Board should require C&SW to produce Mr. Phillips promptly at a later date.

For the above reasons, and for the reasons stated in its December 13, 1979 Motion to Compel Deposition, the Public Utilities Board of the City of Brownsville, Texas respectfully requests this Board to require Central & South West Corporation to compel Mr. S. B. Phillips, Jr., to appear for deposition on the matters listed in the November 23, 1979 Notice of Deposition in Dallas, Texas, on January 8, 1980, or such other time promptly thereafter as may be agreed to.

Respectfully submitted,

Marc R. Poirier

Marc R. Poirier
Attorney for the Public Utilities
Board of the City of Brownsville,
Texas

Law Offices of:
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2600 Virginia Avenue, N. W.
Washington, D. C. 20037
(202)333-4500

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December 28, 1979

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PROGRESS REPORT RE-BROWNSVILLE

DECEMBER 6, 1966

TO: S. B. PHILLIPS, JR.

FROM: R. L. JOHNSON

POOR ORIGINAL

Presented herein is a summary of our observations on the status of this matter and a recommendation as to the next and final step in preparing for further discussion with certain Brownsville citizens.

Our purpose is to provide the C&M representative to Brownsville with adequate Company discussion as to the most feasible method and as to an offering price for obtaining operation of the Brownsville property.

To date, several aspects of the study have been covered separately as follows:

1. The economics of operating the property have been studied and found not to support a necessary offering price. This is so since it is impossible to quantify many of the benefits which will probably result from integrating the operation of Brownsville into C&M.
2. The legal aspects have been investigated and opinions rendered some years ago have been reviewed.
3. The tax aspects have been reviewed and a presentation relating to the most favorable method of obtaining operation of Brownsville tax-wise has been updated.

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4. Cash flow to the city has been reviewed for various methods of obtaining operation of Brownsville and we are now informed as to what minimum payments must be.

What now remains is the financial analysis from which we can make conclusions as to the most feasible method and as to the maximum offering price. The criteria must include the following:

- A. The restrictions covered in the most recent Brownsville bonding ordinance.
- B. The probable reactions of the Brownsville bond holders.
- C. The effect on surplus of either writing off a considerable part of the purchase price, or of writing off the statement in a leasing or contract purchase arrangement.
- D. The effect on COST earnings of the various methods of obtaining the operation.

We propose that this concluding aspect of the study now proceed under the immediate direction of Mr. Waller with one or more financial analysts such as Sandeen, Lawler or Stevenson working on the project.

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Among other considerations, our study would include the following:

1. Study of all outstanding debt ordinances with reference to redemption provisions, current premiums payable, noncallable issues, total cost to retire, etc.
2. Determine, to the extent possible, names of institutional and other holders of debt issues.
3. Review through contacts with investment bankers who placed bond issues and with institutional holders, difficulties in retiring noncallable debt due to market conditions.

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CENTRAL
POWER
AND LIGHT
COMPANY

HOME OFFICE: P. O. BOX 2121, CORPUS CHRISTI, TEXAS 78403

February 7, 1966

OFFICE OF THE
PRESIDENT

POOR ORIGINAL

Mr. R. B. Phillips
Central and South West Corporation
Chicago, Illinois

Dear Dick:

Thank you for your letter of February 3 commenting on the Brownsville situation. The information which you and Hans provided is most helpful, however I am at somewhat of a loss as to how to proceed.

My visit in Brownsville with "the man" was most cordial and I am sure that SI will tell you about it.

One thing that bothers me is the requirement for SEC to approve any purchase by us of these properties. The timing gets around to the old problem--which is first, the chicken or the egg? Jim Wilson has written to Judge Stevenson for help on determining what sort of formula the SEC might approve.

I appreciate all the help you have given me in the past and state again that I realized all along it was most difficult to supply comprehensive figures concerning the value of the Brownsville properties.

Best regards,

Ervin

ESJostlin:AH

CC: Mr. S. B. Phillips, Jr.
Mr. Barney M. Davis

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File
From
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POOR ORIGINAL

January 31, 1968

Mr. E. S. Joslin, President
Central Power and Light Company
120 N. Chaparral Street
Corpus Christi, Texas 78403

326171

Dear Santa:

Subject: Considerations in Determination of Price for Purchase
of Brownsville Property

Brownsville electric revenues are estimated at the present time to be approximately \$3,000,000 annually. The recently prepared Brown and West projection indicates a growth rate of approximately 3% in kilowatts annually, and if we assume no change in overall load factor, this means 3% in KW. Since rate structures are designed as they are, this means a somewhat lower percentage in revenue growth - 2% probably is reasonable for the near future. Brownsville rates are our old (1963) rates. Since most of our 1964 rate adjustment was in the rate available to large use residential customers, the amount of reduction in Brownsville revenue which would result from application of our current rates has been ignored as not being significant.

A realistic approach is first to try to view any possible purchase from the viewpoint of the City of Brownsville. If the reported financial statements, as certified to by Peat, Marwick, Mitchell & Co., anywhere near reflect the true cost of the electric operation on an annual basis, this utility produces somewhere between \$400,000 and \$1,000,000 annually in profits and free services for the city. It is true that there are some restrictions on use of these profits by the city. If the electric system was privately owned, it is probable that about \$100,000 per year in property taxes would be paid and local franchise and other taxes, fees, etc. could easily amount to another \$100,000 per annum. In addition, the city's bonded debt which is now essentially self-liquidating, would have to be paid off, probably in full, and this currently amounts to about \$15,000,000. With the other utilities, water and sewer, debt free, they should generate about \$200,000 per year in profits. This \$200,000 is approximately the amount of interest currently charged against those operations. If the above \$200,000 in taxes plus the \$200,000 reduction in interest costs to the Water and Sewer Departments is deducted from the total utility income now produced, the balance

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Mr. E. S. Jochim

Page 2

January 31, 1964

of from \$400-600,000, at 5.6, is worth between \$0 and \$12 million to the city. This is the amount which would have to be invested at 5.6 to produce the same income.

For purposes of perspective, we have assumed that the purchase cost would be paid with 60% debt (at 5%) and 40% equity. Currently Central Power and Light Company ratios indicate that approximately 37% of their revenue dollar is available for Federal taxes and all money costs. The amount available to pay for the required capital, before taxes, assuming Brownsville operating costs would be typical of the Central Power and Light system as a whole, would be approximately \$1,110,000 annually. This is 37% of the \$3,000,000 gross revenue which is available for debt service, return on equity, and Federal taxes.

If we assume a purchase price of \$23 to \$27 million, and if we use the \$1,110,000 available for Federal taxes and money costs, and assume that it is financed with 60% debt (\$13,000,000 to \$16,200,000) this would leave only \$300,000 to \$420,000 (after \$840,000 to \$10,000 in debt cost) before Federal taxes, or \$166,000 to \$218,000 after taxes for the required common equity. The indicated net return on common on this basis would be approximately 1.4% to 2.4%. If \$30,000,000 were paid, the return on common would be about \$266,000 or 3.3%. As revenues grow this would gradually produce more net for equity. If continuance of the same 37% operating ratio and 3% revenue growth is assumed, then by the end of the first year there would be about \$240,000 in revenue growth and the net available for debt service, Federal taxes, and equity would have increased approximately \$66,000. As a generalization, it has to be assumed that this growth would produce a full return on the investment required to support that growth. Our average revenue dollar is supported by approximately \$3.50 in net plant investment. Some growth of course can be had at much less investment; however, in the long run the investment must be made at approximately the overall rate. We probably would obtain an initial few years advantage on an incremental investment basis. As revenue increases, so must investment; hence, realization of a full return from such a purchase, standing alone, would be very remote indeed, if ever.

It must be kept in mind that the purchase of this business for anything near its apparent value to the city, or even in between that and depreciated original cost, would result in a very sizeable acquisition adjustment, in the magnitude of \$10,000,000 or more. Depreciated original cost appears to be about \$10-11 million. The excess over depreciated original cost would have to be written-off in surplus in a lump sum or amortized over a period of time (perhaps 10-15 years). For rate-making purposes the write-off of acquisition adjustments is almost always "below the line". Acquisition adjustments are viewed as a charge against the equity of the common shareholders. For Federal income tax purposes the base for depreciation would be fair value and the

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January 31, 1960

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difference, if any, would be a non-depreciable intangible. The impact of a 10 year write-off of a \$10,000,000 acquisition adjustment would depend upon how much of the purchase price was treated for Federal income tax purposes as a tax deductible. A 10 year amortization would reduce annual income (or surplus) by \$1,000,000 less the Federal income tax on whatever portion above original cost that is depreciable. The whole adjustment could be written-off all at once, if the earned surplus account could absorb it and leave a safe margin for other contingencies.

An alternate approach to lump sum purchase would be to make larger annual payments to the city. This might lower the acquisition adjustment, but could well raise the problem of other communities making greater demands because of the example set by our treatment of Brownsville bonds. It could be very costly in the long run.

Another alternative might be to assume the city's utility debt; however, in view of covenants and a changed money market, it is at least questionable if bondholders would consent. How much difficulty would be involved because of unhappy bondholders has not been considered. It probably would be to the bondholder's advantage to get his money back and reinvest in something else. Rising interest rates cause declining bond prices; hence, there is incentive to get out of an investment or put or better if given the opportunity. Feasibility is a legal matter to be resolved with counsel. The city's interest rate averages about 1% less than our probable cost of new money.

Regardless of the apparent economic hopelessness of the situation, the decision need not rest here alone. Other considerations may well outweigh the present economics:

1. Brownsville apparently is growing faster than CP & L as a whole, and this new business would be captured. We would spend a great deal of effort and money to obtain this growth elsewhere in our System.
2. Brownsville is a natural for industrial development with its good deep-sea harbor and general location, but to sell prospective industries on the location requires more reliable service than the municipal operation appears to be capable of supplying.
3. Brownsville has no hurricane insurance protection - to obtain it could be very costly - perhaps several hundred thousand dollars per year. A hurricane property loss would have to be absorbed by the city and could be serious. Our System would take such a loss in stride. This could be a good basis for reducing the value of the present system to the city.

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Mr. E. S. Joslin

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January 31, 1961

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4. The elimination of a large strategically located municipal operation has value to us in reducing many future problems. It would eliminate risk of a joint G and I with CCC, and/or a tie in with Mexico. It would eliminate a source of agitation which runs up others.
5. Much of the cost of purchase above depreciated original cost could be recouped by growth otherwise unattainable. Perhaps some reductions in promotional expenditures, etc. might also be in order for consideration.
6. Any proposals that are made to the city probably will have to be on a basis that will leave their utility operation debt free as well as providing them with a source of income. The debt free argument can be used to considerable advantage in negotiations.

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Sincerely yours,

REPR:ds

cc-Mr. S. D. Phillips, Jr.

Mr. R. Stevenson

Mr. F. J. Hart, Jr.

POOR ORIGINAL

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UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
)	
HOUSTON LIGHTING & POWER COMPANY,)	Docket Nos. 50-498A
et al.)	and 50-499A
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(South Texas Project, Units No.)	
1 and 2))	
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In the Matter of)	
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TEXAS UTILITIES GENERATING COMPANY,)	Docket Nos. 50-445A
et al.)	and 50-446A
)	
(Comanche Peak Steam Electric)	
Station, Units No. 1 and 2))	

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing RESPONSE OF THE PUBLIC UTILITIES BOARD OF THE CITY OF BROWNSVILLE, TEXAS TO MOTION TO QUASH OF CENTRAL AND SOUTH WEST CORPORATION to be served on the following by deposit in the United States mail, first class, postage prepaid, this 28th day of December, 1979:

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