[illegible] STATES OF AMERICA
[illegible]

[illegible]

In the Matter of)
) Docket Nos. 50-361
Southern California Edison Company) 50-362
and San Diego Gas and Electric)
Company)

STATEMENT OF CITIES OF ANAHEIM,
RIVERSIDE AND BANNING, CALIFORNIA
FOR SUBMISSION TO THE ATTORNEY
GENERAL FOR ANTITRUST REVIEW

This statement is submitted by the Cities of Anaheim, Riverside and Banning, California, pursuant to Section 201(b) of the Commission's Rules of Practice, for the use of the Attorney General in his antitrust review of the instant applications. It does not purport to be comprehensive, but is intended to call to the attention of the Attorney General the operation of long standing policies of Southern California Edison to force the Cities to remain as all-requirements customers of SCE, all of whose electrical needs are monopolized by SCE.

[illegible] all-requirements contract with SCE [illegible], Anaheim in February 1966 made preliminary inquiries of the Salt River Project concerning a large scale thermal project under consideration by Salt River for construction in the vicinity of Page, Arizona. Salt River confirmed that such a project was under consideration by a group of utilities and provided some preliminary cost estimates then available.

On March 10, 1969, Mr. L. M. Alexander, Assistant General Manager of Salt River Project, wrote to Mr. Gordon W. Hoyt, Utilities Director of the City of Anaheim, inquiring whether Anaheim was still interested in the Project near Page, Arizona, informing him of the Navajo-Four Corners Steering Committee which was studying the project, and enclosing a copy of the Interim Report dated January 3, 1969 prepared by that Committee. The Interim Report shows SCE as a participant with membership on the Steering Committee.

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* / Although the facts recited below relate to the City of Anaheim, they clearly demonstrate SCE's policies with respect to its all-requirements customers, and we have no reason to believe that SCE would act differently in dealing with the other Cities.

That letter and the enclosure are attached hereto as Appendix A.

On March 21, 1969, Mr. Hoyt replied to Mr. Alexander, stating that Anaheim was interested in participating in the project to the extent of 150 MW of generation, together with associated transmission capacity from the generating stations to the Colorado River area and from the Colorado River area to Anaheim, California. That letter is attached hereto as Appendix B.

On April 8, 1969, Mr. Thomas T. Lacy, District Manager's Representative, of SCE wrote to Mr. Hoyt outlining SCE's transmission line plans in the Anaheim area and giving Anahiem until June 1, 1969 to decide between two alternatives: (1) continued service at 66 kv under the existing contract; or (2) 220 kv service under the R-2 rate with a new ten year all requirements contract. That letter is attached hereto as Appendix C.

On April 14, 1969, Mr. Alexander of Salt River, also Chairman of the Navajo-Four Corners Steering Committee wrote to Mr. Hoyt, setting forth the requirements for participation in the study, including financial commitments and designation of representatives to the Steering Committee

and the various Task Forces. The amount which Anaheim was [illegible] to contribute as [illegible] was stated to be $23,691.70. The letter listed the participants in the study at that time, including SCE, and also gave a target date of June 1, 1969 for completing studies and negotiations required to advance the Project beyond the study stage. Mr. Alexander also requested that Anaheim, if it desired to participate, designate its representatives, send its check and send the additional information required before May 12, 1969. That letter is attached hereto as Appendix D.

On April 21, 1969, Mr. Lacy again wrote to Mr. Hoyt correcting an error in his April 8, 1969 letter and again emphasizing the necessity for a decision by Anaheim on 220 kv service by June 1, 1969. That letter is attached hereto as Appendix E.

Thus, Anaheim found itself in a dilemma. At the same time that it had to make a decision on participation (with expenditures of over $23,000) in the Navajo Project study, it was being forced by SCE to choose between two alternatives, either of which would be logically inconsistent

with ultimate participation in the Navajo project by

[illegible] purchased 150 mw of the Navajo capacity; yet as a condition of 220 kv service, SCE attached the requirement that Anaheim enter into a new ten-year all-requirements contract with SCE, making participation in the Navajo project (with the first unit scheduled for 1973 or 1974) impossible.

On April 22, 1969 the Anaheim City Council authorized participation by the City in the Navajo-Four Corners Project studies. On April 25, 1969, Mr. Hoyt wrote to Mr. Alexander, Chairman of the Steering Committee, informing him of this authorization, designating Mr. Hoyt as Anaheim's representative on the Steering Committee and providing the information requested in Mr. Alexander's April 14th letter. On May 2, 1969, Mr. Hoyt sent a letter to Mr. Alexander transmitting a check in the amount of $23,691.70, together with a signed copy of a letter to Steering Committee members dated August 18, 1968 providing authorization for administration of funds. Mr. Hoyt's letters of April 25th and May 2nd, 1969, with the attached signed authorization of funds letter are attached hereto as Appendix F.

Mr. Hoyt attended the Steering Committee meeting

[illegible] but presented at that meeting.

On May 15, 1969 Mr. William R. Gould wrote to the members of the Steering Committee to notify them of SCE's withdrawal as a study participant in the Navajo-Four Corners Project "as it is now constituted." (Letter, p. 3). Several reasons were given in the letter for the withdrawal, one of which was (Letter, p. 2):

> ". . . . In our judgment, as the largest single participant, our Company would have lacked a satisfactory degree of management and control over the planning, construction and operating aspects of that portion of the project upon which we would have depended to serve our customers."

Mr. Gould's letter is attached hereto as Appendix G.

On May 19, 1969, Mr. Hoyt responded to Mr. Lacy's April 8, 1969 and April 21, 1969 letters which had presented Anaheim with two unacceptable alternatives regarding a 220 kv interconnection. Mr. Hoyt selected neither of the alternatives, but offered a counter-proposal detailing the provisions Anaheim would propose to include in a new agreement with SCE. The proposal is summarized in Mr. Hoyt's letter (p. 1) as follows:

> "[illegible] This approach contemplates that SCE will upon receiving just compensation from Anaheim share large new or enlarged electric [illegible] with Anaheim. I propose that upon payment of such compensation SCE would voluntarily permit Anaheim to use transmission capacity in SCE facilities that are in excess of SCE needs. I propose that you would permit us, at our expense, to enlarge facilities constructed, extended, modified or planned by SCE and to utilize the enlarged capacity for the generation and transmission of electric energy for electric energy customers in Anaheim."

Mr. Hoyt's letter is attached hereto as Appendix H.

Mr. Lacy of SCE responded to Mr. Hoyt's letter on May 28, 1969. He again reiterated SCE's need for an immediate decision by Anaheim on 220 kv service. He declined to discuss Anaheim's counter-proposals, stating:

> "The fact that this response does not discuss your other comments should, of course, not be misinterpreted as agreement with them."

This letter is attached hereto as Appendix I.

On May 29, 1969 Mr. Hoyt responded to Mr. Lacy's May 28 letter. He pointed out Anaheim's participation in the Navajo-Four Corners Study, confirmed Anaheim's intention to honor its present ten-year contract, and stated that Anaheim may wish to make other arrangements for its bulk power supply after the expiration of that contract and

therefore did not want to agree to another long-term

[illegible] with SCE representatives at SCE's convenience to begin negotiations on this matter. This letter is attached hereto as Appendix J.

On August 13, 1969, Mr. Hoyt wrote to Mr. Gould, Senior Vice President of SCE. He stated that Anaheim wished to purchase lay-off power from the entitlement of the U. S. Bureau of Reclamation in the Navajo Project, pointed out that in order to purchase this power Anaheim would need some means of transmitting that power to the City of Anaheim from the Los Angeles Department of Water and Power's McCullough Substation. Mr. Hoyt requested SCE's price and other terms and conditions for transmitting energy from the McCullough Substation through SCE's transmission system to the City of Anaheim. This letter is attached hereto as Appendix K.

Mr. Gould replied to Mr. Hoyt by letter of August 22, 1969. He stated:

> "We do not consider our Company to be in a position to perform such transmission service . . . . Its filed tariffs have

[illegible] service
[illegible]

[illegible]

Even if this fundamental principle were otherwise, the request of the City of Anaheim poses, as we believe you are aware, many substantial questions beyond the mere transmission of such power. Among these are the following:

> "1. The amount of lay-off power and the power that can be transmitted into California over the proposed three 500-kv line system is limited; therefore, if Anaheim purchases such power, the amount of power that Edison can purchase for the benefit of all of its customers would be reduced. Such reductions would deprive Edison's customers of the benefit of such power and further, if transmitted by Edison would discriminate against them in the use of such transmission capacity.
>
> "2. Lay-off power will come from the United States' entitlement in Navajo units which are to be installed in 1974, 1975 and 1976; and this power will not be firm and may be interrupted in total or in part at any time for scheduled maintenance or for forced outages. If Anaheim expects to be served either in whole or in part by the Navajo resource, new arrangements would have to be made by Anaheim for power to supplement such resource and for stand-by service. None of Edison's filed tariffs would be applicable to such service."

[illegible] dated [illegible], 1969 and attached as Appendix L to this Appendix [illegible]. Thus, SCE [illegible] to transmit the desired lay-off power for Anaheim at any point and it strongly implied that it would not furnish supplemental or stand-by power to Anaheim either. This response left Anaheim with no means available to transport power or energy it might purchase as lay-off power or which it might own by reason of participation in the joint project. Thus it was precluded from further attempts to purchase lay-off power. A memorandum dated September 3, 1969 from Mr. F. G. Scussel, Chairman of Task Force #9, to Mr. Alexander, Chairman of the Steering Committee, reports a telephone call from Mr. J. E. Conner of SCE on August 29, 1969 advising that SCE will accept the lay-off proposal as outlined in Washington, D. C. on August 27, 1969. That memorandum is attached as Appendix N.

The inability to purchase transmission service over SCE's lines also made it impossible for Anaheim to become a participant in the construction phase of the project and its opportunity for joint participation in this project was lost.

Section 2 of the Sherman Act (15 USC § 2) reads as follows:

> "Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor . . . ."

The leading case of United States v. Griffith, 334 U. S. 100 (1948), states that § 2 of the Sherman Act is aimed, inter alia, at the acquisition or retention of effective market control (334 U. S. at 107). That case involved the use of the combined bargaining power of a number of motion picture theatres to obtain various advantages from motion picture distributors. The Court pointed out that "[t]he anti-trust laws are as much violated by the prevention of competition as by its destruction", and held that "the use of monopoly power, however lawfully acquired, to foreclose competition, to gain a competitive advantage or to destroy a competitor, is unlawful." (334 U. S. at 107).

A fully integrated electric utility has three basic "products": Generation (sold separately as stand-by power, reserves, etc.), Transmission (sold separately as transmission capacity or service under short or long term arrangements)

[illegible] customers. [illegible] all-requirements distribution systems from [illegible]. The facts stated above demonstrate, Anaheim */ [illegible] end of its present contract term an opportunity to provide its own Generation through joint participation in large-scale generating plants, to purchase Transmission service from SCE and to provide its own Distribution. Since SCE enjoys monopoly control over Transmission in the area of Anaheim, Anaheim cannot practically pursue its goal unless it can purchase its transmission needs from SCE. Edison's position leaves only two alternatives: to install all its own isolated generation requirements, which is not economically practical, or to remain a captive wholesale Distribution customer of SCE. It is thus evident that SCE has used its monopoly control over transmission service to continue a monopoly control over the wholesale distribution of capacity and energy.

The Supreme Court has held that refusal to deal in order to preserve a monopoly constitutes illegal

*/ Riverside is also considering similar possibilities.

[illegible] Federal Trade Comm. v. Southern Pacific Co., 259 U. S. 214 [illegible] Terminal Co. v. United States, 342 U. S. 141 (1951), where a newspaper refused to sell advertising space to anyone who advertised on a competing radio station, the Court held, 342 U. S. at 149, that:

> ". . . . a single newspaper, already enjoying a substantial monopoly in its area, violates the 'attempt to monopolize' clause of § 2 when it uses its monopoly to destroy threatened competition.

The so-called "bottleneck cases" are also relevant to a refusal to sell transmission service under the circumstances outlined in the statement of facts above. A leading case is United States v. Terminal Railroad Association, 224 U. S. 383 (1912). There a terminal company established by a group of railroads owned the lines connecting the terminals on each side of the Mississippi River with the only two bridges and ferry available for crossing the river. The Court held, 224 U. S. at 515, that:

> ". . . . When the inherent conditions are such as to prohibit any other reasonable means of entering the city, the combination of every such facility under the exclusive ownership and control of less than all of

> the companies under compulsion to use them violate both the first and second sections of the act . . . ."

See also Associated Press v. United States, 326 U. S. 1 (1945), and Silver v. New York Stock Exchange, 373 U. S. 341 (1963). In the Navajo-Four Corners situation described above, Anaheim could purchase generation, it could purchase transmission as far as SCE's system, but it could not get that generation from that point to its own system due to SCE's refusal to sell Transmission service to Anaheim.

The statement of facts outlined above, supra, pp. 2 -10, also show that SCE has tied the sale of its transmission service, over which it has monopoly control, to the sale ofits own generation (generated by it in its own facilities or in facilities jointly owned with other utilities, or purchased by it from others for resale) on an all-requirements basis.

A leading case is Northern Pacific Ry. Co. v. United States, 356 U. S. 1, where the Court said, 356 U.S. at 5-6:

> "[T]here are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use . . . .

". . . . Where [tying] conditions are [illegible]

". . . . They deny competitors free access to the market for the tied product, not because the party imposing the tying requirements has a better product or a lower price but because of his power or leverage in another market.

". . . . They [tying arrangements] are unreasonable in and of themselves whenever a party has sufficient economic power with respect to the tying product to appreciably restrain free competition in the market for the tied product and a 'not insubstantial' amount of interstate commerce is affected." International Salt Co. v. United States, 332 U. S. 392.

In a recent case, Fortner Enterprises v. United States Steel Corp., 394 U. S. 495 (1969), the Supreme Court held the tying of credit to the sale of prefabricated homes to be an unlawful tying arrangement.

It is well established that the Commission has the affirmative obligation to scrutinize matters which come before it to determine their consistency with the national policy in favor of free competition. See P. L. 91-560.

It is clear from the statement of facts and the

the spirit of the national policies in favor of free competition expressed in the antitrust laws. Thus, SCE should not be permitted to aggrandize its economic power by construction of the San Onofre units until it agrees to provide to Cities non-discriminatory transmission service and makes available to the Cities on a non-discriminatory basis either partial ownership of the units or power therefrom, together with the necessary provision in its rate schedules for partial requirements service.

Respectfully submitted,

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