IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

* * *

NO. 82, ORIGINAL

* * *

THE STATE OF NEW MEXICO,

Plaintiff

V.

THE STATE OF TEXAS,

Defendant

* * *

APPENDIX TO BRIEF IN OPPOSITION

* * *

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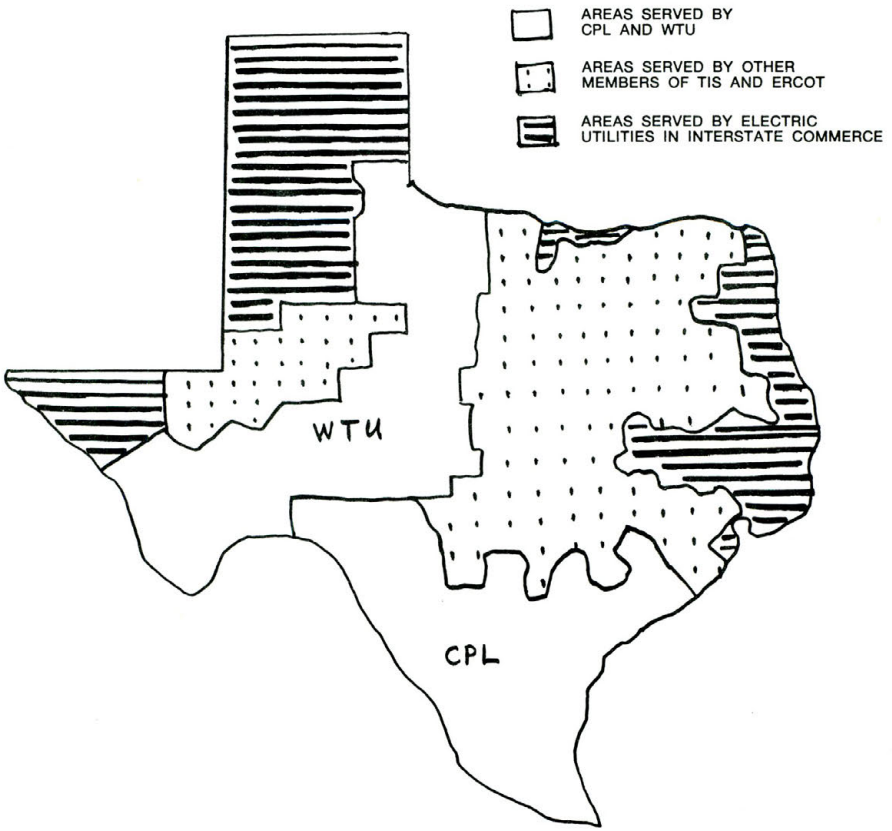
APPENDIX A

AREAS SERVED BY TEXAS ELECTRIC UTILITIES



DOCKET NO. 14

RE: THE APPLICATION OF	)(	THE PUBLIC UTILITY
HOUSTON LIGHTING AND	)(	COMMISSION OF TEXAS
POWER COMPANY, ET AL,	)(	
FOR RECONNECTION OF	)(	
THE TEXAS INTERCON-	)(	
NECT SYSTEM	)(	

Interim Order

Houston Lighting & Power Company, herein referred to as HL&P, Texas Power & Light Company, herein referred to as TP&L, Dallas Power and Light Company, herein referred to as DP&L, and Texas Electric Service Company, herein referred to as TESCO, filed with The Public Utility Commission of Texas on January 7, 1977, complaints against West Texas Utilities Company, herein referred to as WTU, and Central Power and Light Company, herein referred to as CP&L, alleging that they had breached their contract with other members of the Texas Interconnect System causing a disruption of such system resulting in loss of economical, reliable, and safe electrical service to the rate payers of such interconnected systems, and praying for reconnection of such system as it existed on May 3, 1976.

That subsequently the following parties answered or intervened to become parties to the proceedings in said docket:

1. Central Power and Light Company
2. West Texas Utilities Company
3. Lower Colorado River Authority, herein referred to as LCRA
4. The City of Austin, Texas
5. City Public Service Board of San Antonio, herein referred to as CPSB

6. South Texas Electric Cooperative
7. Brazos Electric Power Cooperative, Inc.
8. Medina Electric Cooperative, Inc.
9. Western Farmers Electric Cooperative
10. Southwest Texas Electric Cooperative, Inc.
11. Concho Valley Electric Cooperative
12. Texas Municipal Power Agency

Based upon the pleadings and evidence submitted during the several public hearings in said docket, Federal Power Commission order in Docket No. E-9583, and Docket No. E-9558, which the Commission takes official notice of, the Commission makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. That each of the above parties in their pleading have petitioned the Commission to order reconnection of the Texas Interconnect System on the grounds that it si in the public interest, which pleadings are recognized as admissions from all parties for purposes of this interim order.

2. That the Commission has encouraged reconnection or in the alternative if the system is to remain divided, allowing each company or authority the option to connect to the system furnishing the greatest reliability of electric service.

3. That there presently appears no possibility of voluntary reconnection of the Texas Interconnect System, and it now further appears that the LCRA, City of Austin and

CPSB will not be allowed to disconnect from CP&L and WTU even though they have expressed a desire to do so, and have alleged that the lack of reliability is causing them to maintain high spinning reserves which is both costly and wasteful of scarce fuels.

4. That all parties admit that the Texas Interconnect System is an old and reliable system and that it has served the interconnected parties and the public reliably, economically and well.

5. That the Texas Interconnect System was founded and based upon contractual conditions, and its dissolution resulted from the breach of such contractual conditions by WTU.

6. That since the Texas Interconnect System is founded upon contracts between the parties hereto, even if WTU & CP&L claim such contracts are void or voidable as being against public policy, until such contracts are declared to be void or voidable by a court of general jurisdiction this Commission should not require a reconnection which would force any party to violate a contract entered into in good faith between the parties hereto with respect to the formation and operation of such system.

7. That there is presently pending in the Federal District Court for the Northern District of Texas, sitting in Dallas, Texas, an action on the question of whether such contracts are void or voidable, and this Commission has neither the jurisdiction nor the inclination to pre-empt said Court on the matter.

8. That synchronous operations between WTU and CP&L and the Southwest Power Pool was

begun on August 28, 1976, but because of problems arising due to wide power fluctuations such operations were disconnected on January 22, 1977.

9. That a radial tie off WTU's system now serving a few customers in Oklahoma has no significant economic impact, or federal jurisdictional impact, but is maintained for the purpose of precluding a reconnection of the Texas Interconnect System until all other parties agree to waive their contract rights as to the character and operation of such system.

10. That this Commission is not concerned with the question of whether such system or any member thereof operates in intra or inter state commerce, but instead is concerned only with the public interest.

11. That the radial tie from WTU into Oklahoma is a violation of that company's contract with others members of the Texas Interconnect System and is an impediment to the reconnection of such system and is not in the public interest and should be removed or disconnected.

12. That to Order a reconnection of such system without the removal of such radial tie would violate the contract rights of TP&L, DP&L, TESCO and HL&P, and would in effect usurp the rights of the Federal District Court to pass on the validity of such contracts.

13. That the Texas Interconnect System should be immediately restored to and maintained in its condition as of May 3, 1976, until the end of this hearing and a final order therein.

Conclusions of Law

1. That until some authority with general jurisdiction determines otherwise the Texas Interconnect System as it existed on May 3, 1976, is the only legal interconnect system, and therefore, the only one which this Commission can order to be reconstituted at this time.

2. That since the Order in Federal Power Commission Docket No. E-9583 and Docket No. E-9558 allows interconnection without jurisdiction on intrastate parties, the conditions for reconnection has absolutely no impact or bearing on interstate commerce.

3. That the reconnection and reestablishment of the Texas Interconnect System as it existed on May 3, 1976, shall be without prejudice to the rights of any party to this proceeding, nor shall it in any way limit or preclude the Commission from entering the proper order at the close of these proceedings.

4. That the Commission has the jurisdiction over the parties and the authority under the law to issue an interim order herein.

ORDER

It is, therefore, the ORDER of this Commission that the parties hereto immediately reestablish the Texas Interconnect System as it existed on May 3, 1976, and as contractually agreed to by such parties and that any and all disconnects which must be made to remove the contract impediments to such reconnection be made immediately.

It is further ORDERED that such system as it existed on May 3, 1976, be maintained without change after

reconnection until further order by this Commission.

It is the further ORDER of this Commission that the public interest requires immediate reconnection of such system, and that failure of any party or parties to make immediate compliance with this ORDER shall subject the defaulting party or parties to all penalties provided in law for violation of an ORDER of this Commission.

ENTERED AT AUSTIN, TEXAS, THIS 2ND DAY OF MAY, 1977.

SIGNED: s/s
Garrett Morris

SIGNED: s/s
Alan R. Erwin

(SEAL)

SIGNED: s/s
George M. Cowden

ATTEST:

s/s
Roy J. Henderson
Commission Secretary and
Director of Hearings

DOCKET NO. 14

RE: THE APPLICATION OF	)(	THE PUBLIC UTILITY
HOUSTON LIGHTING AND	)(	COMMISSION OF TEXAS
POWER COMPANY, ET AL,	)(	
FOR RECONNECTION OF	)(	
THE TEXAS INTERCON-	)(	
NECT SYSTEM	)(	

Amended Final Order

After hearing and considering all motions for rehearing on July 11, 1977, the Commission hereby amends its final order to be and read as follows:

Houston Lighting & Power Company, herein referred to as HL&P, Texas Power & Light Company, herein referred to as TP&L, Dallas Power and Light Company, herein referred to as DP&L, and Texas Electric Service Company, herein referred to as TESCO, filed with The Public Utility Commission of Texas on January 7, 1977, complaints against West Texas Utilities Company, herein referred to as WTU, and Central Power and Light Company, herein referred to as CP&L, alleging that they had breached their contract with other members of the Texas Interconnect System, hereinafter referred to as TIS, causing a disruption of such system resulting in loss of economical, reliable, and safe electrical service to the rate payers of such interconnected systems, and praying for reconnection of such system as it existed on May 3, 1976.

That subsequently the following parties answered or intervened to become parties to the proceedings in said docket:

1. Central Power and Light Company
2. West Texas Utilities Company
3. Lower Colorado River Authority, herein referred to as LCRA

4. The City of Austin, Texas
5. City Public Service Board of City of San Antonio, herein referred to as CPSB
6. South Texas Electric Cooperative, Inc.
7. Brazos Electric Power Cooperative, Inc.
8. Medina Electric Cooperative, Inc.
9. Western Farmers Electric Cooperative
10. Southwest Texas Electric Cooperative, Inc.
11. Concho Valley Electric Cooperative, Inc.
12. Texas Municipal Power Agency

Based upon the pleadings and evidence submitted during the several public hearings in said docket and in the final hearing of said docket, Federal Power Commission Order in Docket No. E-9583, and Docket No. E-9558, which in compliance with Council's request during the course of such proceedings and without objections raised during such hearing the Commission takes official notice of, the Commission makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. That the TIS had developed over a long period of time, some of such interconnections going back as far as 1924.
2. That as the interconnections increased, the transmission and generating facilities of TIS were developed to operate in synchronism, so that the loss of any unit on the system automatically caused the other units to increase output to pick up the lost load.

3. That as of May 3, 1976, there were 282 generating units in the TIS synchronous operation.

4. That the TIS prior to May 3, 1976, utilized central planning for operational controls to insure reliability, and stability of the system.

5. That the TIS was not designed to operate in synchronism with the Southwest Power Pool or any other large system.

6. That the TIS cannot operate in synchronism with the Southwest Power Pool or any other large system without the expenditure of large sums of money for new and improved transmission lines.

7. That the costs for adequate transmission lines for the TIS to operate in synchronism with the Southwest Power Pool could equal or exceed one billion dollars.

8. That interconnection with the Southwest Power Pool would not increase the reliability of TIS, but would increase the time required for stabilization of the system in case of the loss of load on one of the systems.

9. That the costs for proper interconnection between the TIS and the Southwest Power Pool exceeds the benefits to the rate payers on the Texas Interconnect System.

10. That the rate payers of the TIS can ill afford to carry the extra burden of interconnection with the Southwest Power Pool in addition to the cost of converting the generating facilities of such system so as to use more abundant fuels.

11. That each of the members of the TIS in order to protect themselves against the cost and loss of stability of interconnection with the Southwestern Power Pool or other large systems had conditioned such interconnection on intrastate operation of each of the interconnected companies through individual contracts or through the terms and conditions of membership in the Electric Reliability Council of Texas, hereinafter referred to as ERCOT.

12. That such condition was contractual and if not covered by individual contracts was part of the terms and conditions of the ERCOT agreement and was predicated upon the fact that once a company enters interstate commerce some other State or Federal Authority may order inteconnection regardless of the costs or benefits to the members of the Texas Interconnected System.

13. That if any one of the interconnected companies goes into interstate commerce all the interconnected companies are placed in interstate commerce.

14. That each company should have the choice of operating in the mode which best serves the interest of its customers.

15. That WTU is currently, and was prior to May 3, 1976, operating in intrastate commerce through its southern division, and in interstate commerce through its northern division.

16. That any party to the interconnected system which wishes to withdraw from such intrastate system should first furnish the Commission with complete plans for such withdrawal,

together with the costs thereof, as well as sufficient engineering data to establish the reliability of service after withdrawal.

17. That each company in the TIS should have the right to operate in interstate commerce if it so desires provided that it does not increase the costs or lessen reliability to its rate payers as the results of such operations, and provided further that it first withdraws from the Texas Interconnect System.

18. That all the members of TIS were also members of ERCOT and such interconnections being conditioned on contracts between the various parties, such contracts are presumed to be valid until set aside or voided by a court of general jurisdiction.

19. That the mode of operations by WTU after May 4, 1976, was not in the public interest or the interest of its rate payers, but was done for the benefit of the corporate interest of Central and Southwest Corporation, the holding company owning its common stock.

20. That the mode of operation of WTU subsequent to May 4, 1976, caused the dissolution of the TIS resulting in loss of reliability and increased operating costs for the customers of all the members of the system.

21. That the radial tie into Oklahoma from WTU's southern division did not serve any interest except the Corporate interest of Central and Southwest Corporation, the holding company for WTU and CP&L.

22. That the radial tie into Oklahoma from WTU's southern division on May 4, 1976, resulted in

dissolution of the Texas Interconnect System and increased operating costs to all rate payers of all the members of such system.

23. That WTU gave no notice to any other member of the TIS of the radial tie into Oklahoma because the purpose of such tie was to force all members of such system into interstate commerce for the benefit of the corporate interest of Central and Southwest Corporation.

24. That synchronous operations between WTU and the Southwest Power Pool which began August 28, 1976, and continued to January 22, 1977, was unsatisfactory for WTU and all companies interconnected with them because of the wide power swings and delayed stabilization time after an outage.

25. That the corporate interest of Central and Southwest Corporation and the public interest are not necessarily parallel.

26. That the public interest requires electric utilities to maintain such transmission interconnections as are helpful to the reliable and efficient utilization of existing and proposed generation and transmission capacity.

27. That the series of interconnections between and through the TIS has been relied upon historically to provide, and is presently capable of providing the interconnections necessary for the efficient and reliable utilization of the generation and transmission capacity of the electric utilities heretofore interconnected to said system.

28. That the present plant of utilities connected by

and through the generation and transmission network of the TIS as of May 3, 1976, is designed in reliance upon said network and depends upon maintenance of said connections for its reliable and efficient operation.

29. That no other system of interconnections is in place or proposed which will reliabily and efficiently utilize the generation and transmission capacity of existing or proposed plant of the electric utilities heretofore connected.

30. That construction of planned new generation and transmission capacity essential to meet future load growth, and to implement necessary conversion to fuels other than natural gas, requires certainty that the utility systems connected together in the TIS will remain so interconnected or substantially so, henceforth, insofar as can now be foreseen.

31. That the TIS was founded and based upon contractual conditions, either directly or through ERCOT terms and conditions for membership, and its dissolution resulted from the breach of such contractual conditions by WTU.

32. That since the TIS, either directly or through the ERCOT agreements, is founded upon contracts between parties hereto, even if WTU and CP&L claim such contracts are void and voidable as being against public policy, until such contracts are adjudicated to be void or voidable by a final judgment of a court of competent jurisdiction, this Commission should not require a reconnection which would force any party to waive its rights under a contract entered into in good faith between the

parties hereto with respect to the formation and operation of such system.

33. That there is presently pending in the Federal District Court for the Northern District of Texas, sitting at Dallas, Texas, an action to determine whether such contracts are void or voidable, and this Commission has neither the jurisdiction nor the inclination to pre-empt said Court on the matter.

34. That a radial tie off WTU's southern division system which on May 1, 1977, was serving few customers in Oklahoma had no significant economic impact, and since the Order in Federal Power Commission Docket No. E-9583 had no jurisdictional impact, but was maintained solely for the purpose of precluding a reconnection of the TIS unless all other parties should agree to waive their contract rights as to the character and operation of such system.

35. That this Commission is not concerned with the question of whether the TIS or any member thereof operates in intrastate or interstate commerce, but instead is concerned only with the public interest.

36. That the radial tie from WTU's southern division into Oklahoma is contrary to the terms and conditions of the ERCOT agreement which constitute a part of WTU's contract with other members of the TIS and is an impediment to the reconnection of such system and is not in the public interest and should be removed or disconnected.

37. That to order a reconnection of the TIS without the removal of such radial tie would compel

TP&L, DP&L, TESCO and HL&P to operate contrary to the terms of their interconnection contracts, and would in effect usurp the rights of the Federal District Court to pass on the validity of such contracts.

38. That existing transmission facilities of WTU are not capable of sustaining synchronous operations between the utility systems connected through the TIS and those connected through the Southwest Power Pool, and the additional high-voltage transmission facilities which would be necessary in Texas electrically to sustain such synchronous operations are not presently in place or under construction or covered by certificates of convenience and necessity or by applications for such certificates.

39. That the existing plant of CP&L is not capable of providing reliable low-cost electric power and energy if disconnected from the generation and transmission interconnections which existed through the TIS as of May 3, 1976.

40. That the public interest requires the maintenance of the series of interconnections existing on May 3, 1976, between the electric utilities then interconnected by and through the TIS.

41. That pursuant to the interim order of this Commission of May 2, 1977, the interconnections of the TIS have been restored as they existed on May 3, 1976, and that WTU has disconnected its northern division facilities from that portion of its system interconnected with the TIS.

42. That CP&L and WTU have given notice of their

intention to challenge the authority of this Commission to enter any order affecting in any way the flow of electricity across state boundaries on the grounds that such orders are violative of the supremacy clause and the commerce clause of the Federal Constitution.

43. That the period between May 3, 1976, and May 2, 1977, during which the TIS was bifurcated, was characterized by reduced reliability, increased spinning reserves, higher costs, and greater consumption of natural gas than had been the period preceding May 3, 1976; that such undesirable conditions can be expected to recur if this Commission were to permit the TIS again to be bifurcated.

44. Although at this time the Commission does not find an immediate need for the expansion of the TIS into a power pooling network, neither does this Commission reject its responsibility to provide for such an arrangement at such time in the future, if any, when it would benefit the rate payers of the State of Texas.

45. That the objections and exceptions to the final order herein contained in the motions for rehearing except to the extent adopted herein should be overruled for want of merit.

Conclusions of Law

1. That the Commission has jurisdiction over the parties.

2. That utilities which undertake to provide electric utility service in the State of Texas are under a duty to provide and maintain such service, instrumentalities and facilities as shall be adequate, efficient and reasonable for the

provision of such service irrespective of whether such utilities also provide service to or receive service from other states or are subject to the jurisdiction of the Federal Power Commission.

3. That the State of Texas has the authority and power to insure that utilities providing service in this State meet their public utility duties irrespective of whether such utilities also provide service to or receive service from other states or are also subject to the jurisdiction of the Federal Power Commission and that such power and authority is vested in this Commission.

4. That the incidental and insubstantial effect upon interstate commerce of the exercise of such jurisdiction in this case does not constitute an undue burden on interstate commerce.

5. That this Commission has the power to compel interconnection of utilities in the public interest.

6. That the public interest requires this Commission to order the immediate and permanent reconnection of the interconnections between the utility systems comprising the Texas Interconnected System.

7. That this Commission has no jurisdiction to adjudicate the validity or invalidity of the contractual obligation of WTU to refrain from interstate sales of electric energy through its southern division system.

8. That there is no showing in this proceeding that the public interest requires or would justify this Commission in relieving WTU of its contractual obligations or requiring HL&P,

TESCO, DP&L or TP&L to waive their contract rights within the standards pronounced in *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *High Plains Natural Gas Co. v. Railroad Commission of Texas*, 467 S.W.2d 532 (Tex. Civ. App. -- Austin 1971, *writ ref'd n.r.e.).*

ORDER

The following, therefore, is the ORDER of this Commission:

1. The Interim Order of this Commission of May 2, 1977, and the actions of the parties pursuant thereto, are confirmed and approved; the said Interim Order is now incorporated into this amended Final Order by reference.

2. All interconnections presently in existence between the utility systems comprising the TIS, together with all such future interconnections as may hereafter be established between them with the approval of this Commission shall henceforth remain connected, unless, upon application to this Commission and notice to all parties to this proceeding, this Commission shall find that any proposed disconnection would serve the public interest.

3. WTU may block over electric loads between its northern division system and its southern division system which does not result in the interstate transmissions or sale of electric energy by or at the southern division system.

4. WTU is prohibited from re-establishing a connection between the southern division of its system which is now connected to the TIS and

the northern division of its system being that segment which is not now so connected, unless:

A. The contractual prohibitions against interstate sales shall be finally adjudicated to be void or voidable,

B. This Commission shall authorize or the Federal Power Commission shall order a connection, or

C. A court of competent jurisdiction shall order WTU to take action inconsistent with the foregoing prohibition.

5. WTU operating through its southern division and all other operating utility systems connected with the TIS are prohibited from making connections with utility systems not so connected or with segments thereof and from providing service outside of their certificated areas, unless:

A. The service is authorized by specific provisions of the The Public Utility Regulatory Act, Art. 1446(c) V.A.C.S.

B. The Federal Power Commission shall order such a connection or,

C. This Commission shall authorize such a connection or service (a) to cope with an emergency or (b) upon application, notice to all parties hereto, and finding that the proposed interconnection or service would serve the public interest.

6. That any party to the interconnected system which wishes to withdraw and disconnect from such intrastate system shall furnish the Commission with complete plans for such

withdrawal together with the costs thereof, as well as sufficient engineering data to establish the reliability of service after withdrawal and disconnection.

7. That such information required in Section #5 above shall:

   A. Be given to the Commission at least thirty days prior to the planned withdrawal and disconnection,

   B. Such notice of the planned withdrawal and disconnection shall be given to each member utility of the TIS at least thirty days prior to the planned withdrawal,

   C. The cost information provided to the Commission shall be sufficient to allow the Commission to determine the probable economic impact of the planned withdrawal on the rate payers of both the withdrawing utility and the rest of the TIS utilities,

   D. The engineering information provided to the Commission shall be sufficient to allow the Commission to determine the probable impact of the planned withdrawal and disconnection on the system reliability of both the withdrawing system and the rest of the TIS utilities.

   E. The rest of the members of the TIS, within ten days of receiving notice from the member utility of its planned withdrawal and disconnection, shall file jointly or individually with the Commission, information regarding the probable impact of the planned withdrawal on

system operating costs and system reliability, and notice of any significant changes in TIS operation which the planned withdrawal and disconnection will necessitate.

8. Members of the TIS shall file with the Commission every six months a report detailing the utility's fuel conversion program. The report should provide information on present fuel mix, conversion achieved in the reporting period, and conversion scheduled in the coming period. Information should be provided for all available capacity and the actual capacity used. Information should be provided describing the utility's fuel acquisition program to meet the conversion schedule described. The reports shall be due January and July 1st of each year.

9. Members of the TIS shall file monthly with the Commission a record of all forced outages experienced by the utility during the reporting period. The report should include the date, size (MW) duration and probable cause of the outage. The report shall also provide the MW remaining in service during the outage, the coincident system peak during the outage, and the percentage generating capacity reserve of the system at its lowest point during the outage. The report should detail any load interruptions, frequency changes, or other alterations in normal service, if any, which were undertaken by the utility during the period of outage. The report shall be due at the Commission not more than thirty days after the reporting period.

10. Each party hereto which is connected to the TIS and which shall henceforth file an application with this Commission for

certification of transmission facilities, shall give immediate notice to all other parties to this proceeding of the filing of such application.

11. Each numbered paragraph of this Order and each supplemental Order which may be entered pursuant hereto, is intended to be and is severable from each other numbered paragraph of this Order and each supplemental Order pursuant hereto. The invalidation of any numbered paragraph of this Order or of any supplemental Order which may be entered pursuant hereto, shall in no wise affect any other numbered paragraph of this Order or any other supplemental Order, but the same shall remain in full force and effect.

12. All motions, objections and requested findings of fact and conclusions of law not included in the above findings and conclusions are hereby overruled for want of merit of each of them.

13. The failure of any party or parties to make compliance with this Order shall subject the defaulting party or parties to all penalties provided in the law for violation of an Order of this Commission.

14. The motions for rehearing, except to the extent that the grounds therefor are incorporated in this Amended Final Order, are overruled for want of merit.

ENTERED AT AUSTIN, TEXAS, this 11th day of July, 1977.

SIGNED: s/s
Garrett Morris

SIGNED: s/s
Alan R. Erwin

SIGNED: s/s
George M. Cowden

(SEAL)

ATTEST:

s/s
Roy J. Henderson
Commission Secretary and
Director of Hearings

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

AUSTIN DIVISION

Central Power and Light Company and West Texas Utilities Company,	)(	
Plaintiffs,	)(	
VS.	)(	
	)(	Civil Action No. A-77-CA-86
The Public Utility Commission Of Texas,	)(	
Defendant.	)(	

FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

CENTRAL POWER AND LIGHT COMPANY ("CPL") and WEST TEXAS UTILITIES COMPANY ("WTU"), the Plaintiffs herein, bring this action against THE PUBLIC UTILITY COMMISSION OF TEXAS ("Commission") for a declaratory judgment and for their cause of action allege as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 inasmuch as the action arises under Article I, Section 8, and Article VI of the United States Constitution, 16 U.S.C. § 824, et seq., and the amount in controversy exceeds the sum or value of $10,000. Additionally, all claims are before this Court under pendant jurisdiction.

2. This action seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201, 2202 that an order entered by a state administrative agency is void insofar

as it orders Plaintiffs to disconnect and refrain from interstate connections, transmissions or sales of electric power. Since such order is *not* one affecting rates chargeable by a public utility, *does* interfere with interstate commerce, and jurisdiction of this action is *not* based solely on diversity of citizenship or repugnance of the order to the Federal Constitution, the jurisdiction of this Court may be exercised pursuant to 28 U.S.C. § 1342.

3. The Defendant Commission resides in and this cause of action arose in the Western District of Texas. Venue is proper pursuant to 28 U.S.C. § 1391(b).

Parties

4. Plaintiff CPL is a Texas corporation, having its principal place of business in Nueces County, Texas. Plaintiff WTU is a Texas corporation having its principal place of business in Taylor County, Texas. At all times pertinent hereto, both CPL and WTU have been public utilities engaged in the generation, transmission and sale of electric power.

5. The Commission is an administrative agency created and existing under the laws of the State of Texas, acting by and through Chairman William Garrett Morris, and Commissioners Alan R. Erwin and George M. Cowden. The Commission has its principal offices at Austin, Travis County, Texas, and service of citation may be made on the Commission by delivery thereof to its Secretary, Executive Park Plaza, 7800 Shoal Creek Boulevard, Austin, Texas 78757.

Allegations and Prayer

6. Prior to May 4, 1976, both CPL and WTU's southern division operated wholly within Texas and were directly or indirectly electrically connected with other electric systems comprising the Electric

Reliability Council of Texas ("ERCOT"), all also operating solely within the State of Texas. Early on May 4, 1976, WTU switched the connections in one of its substations to pick up service to loads in three communities in Oklahoma resulting in the transmission and sale for resale of electric power in interstate commerce. Because WTU and CPL were, and are, interconnected, this transmission and sale for resale of electric power placed both of them under the jurisdiction of the Federal Power Commission ("FPC") pursuant to the Federal Power Act, 16 U.S.C. § 824, et seq. Later on that same day, May 4, 1976, the largest ERCOT members, Houston Lighting & Power Company ("HLP") and the subsidiaries of Texas Utilities Company ("TU") disconnected from the other ERCOT systems in an attempt to avoid FPC jurisdiction.

7. In January of this year, TU, HLP and other intervenors filed motions before the Commission praying for, inter alia, restoration of ERCOT as it existed prior to May 4, 1976, and that CPL and WTU be ordered not to proceed with any construction, installation or acquisition of property for interconnection with any electric utility outside the State of Texas.

8. The Commission on May 2, 1977, without any evidentiary hearings on those motions, issued an Interim Order ("the Interim Order") which required WTU and CPL to immediately cease all interstate transmissions and sales for resale of electric power. A copy of the Order is attached hereto as Exhibit A and is incorporated herein by reference for all purposes.

9. The Interim Order was contrary to the permissible scope of a state public utility regulatory scheme and is inconsistent with the Federal Constitution and Statutes in that it is implemented in such a manner as to effectively bar a public utility from maintaining and continuing any and all transmissions in interstate commerce.

10. The Interim Order required WTU and CPL to cease the transmission and sale of electric power in interstate commerce. In so doing, it violated the Commerce Clause, United States Constitution, Article I, Section 8.

11. The Interim Order also violated the Supremacy Clause, United States Constitution, Article VI, because it contravenes the Congressional mandate set out in the Federal Power Act, 16 U.S.C. § 824, et seq., that interstate transmissions and sales for resale of electric energy are subject to exclusive federal regulation.

12. The Interim Order which required WTU and CPL to cease the interstate transmission of electric power and requires WTU to disconnect from certain of its customers exceeded the statutory authority given this Commission under the Public Utility Regulatory Act, Article 1446c.

13. The Interim Order and the findings of fact and conclusions of law contained therein were made upon unlawful procedure in that, among other things, WTU and CPL were not given an opportunity to present evidence in opposition to these findings of fact in violation of Section 13(d) of the Administrative Procedure and Texas Register Act. The Commission took "official notice" of "the pleadings and evidence submitted during the several public hearings in said docket, Federal Power Commission Order in Docket No. E-9583, and Docket No. E-9558" in making its findings of fact and conclusions of law. The taking of such "official notice" violated Section 14(q) of the Administrative Procedure and Texas Register Act because it did not afford WTU and CPL an opportunity to contest the material so noticed.

14. The findings of fact made by the Commission in support of its Interim Order were not reasonably supported by substantial evidence because, among

other things, they were issued in response to certain motions without holding an evidentiary hearing on those motions. In particular, but without limitation, there was no substantial evidence to support Finding of Fact Nos. 1, 5, 6, 8, 9, 11, 12 and 13.

15. The Interim Order, the findings of fact and conclusions of law (particularly Conclusions 1 and 2) contained therein were affected by error of law. The entry of this Interim Order was, in legal contemplation, an unwarranted exercise of discretion.

16. After filing this Interim Order, the Commission proceeded to hold an evidentiary hearing on the motions and complaints filed by TU, HLP and the other intervenors. At the conclusion of such hearing, the Commission filed a Final Order ("the Final Order") dated June 2, 1977. Motions for Rehearing of this Final Order were filed by WTU, CPL and others. On July 11, 1977, the Commission filed an Amended Final Order ("Amended Order") which is attached hereto as Exhibit B.

17. The Amended Order by express terms confirmed and approved the Interim Order and "incorporated" it by "reference." The Amended Order, like the Interim Order, requires WTU and CPL to cease interstate transportation of electric power and the sale of such power in interstate commerce.

18. The Amended Order, like the Interim Order which is incorporated therein, is contrary to the permissible scope of a state public utility regulatory scheme and is inconsistent with the Federal Constitution and Statutes in that it is implemented in such a manner as to effectively bar WTU and CPL from maintaining and continuing any and all transmission in interstate commerce.

19. The Amended Order requires WTU and CPL to

cease the transmission and sale of electric power in interstate commerce. Further, it imposes unreasonable and discriminatory conditions on any future transmission and sales of electric power in interstate commerce. In doing these things, the Amended Order violates the Commerce Clause, United States Constitution, Article I, Section 8.

20. The Amended Order also violates the Supremacy Clause, United States Constitution, Article VI, because it contravenes the Congressional mandate set out in the Federal Power Act, 16 U.S.C. § 824, et seq. that interstate transmission and sale for resale of electric energy are subject to exclusive federal regulation.

21. The Amended Order, in requiring WTU and CPL to cease the interstate transmission of electric power and to disconnect from certain of its customers, and in imposing unreasonable and discriminatory conditions on future interstate transmission and sales of electric power in interstate commerce exceeds the statutory authority given this Commission under the Public Utility Regulatory Act, Article 1446c.

22. The Amended Order is supported by findings of fact which are not reasonably supported by substantial evidence. In particular, but not without limitation, there is no substantial evidence in this record to support Findings of Fact Nos. 4, 6-12, 15, 17-25, 27, 28, 29, 31, 32, 34, 36, 37, 40 and 45.

23. The conclusions of law made by the Commission in support of its Amended Order are erroneous and affected by error of law. In particular, but without limitation, Conclusions Nos. 3, 4, 6 and 8 are invalid because they are affected by error of law and violate constitutional and statutory provisions.

WHEREFORE, Plaintiffs pray for a declaratory

judgment that the Amended Order of July 11, 1977, and the Interim Order of May 2, 1977, as therein incorporated are invalid, unlawful and void, and be set aside insofar as it orders CPL and WTU to disconnect and to refrain from interstate connections, transmissions, or sales of electric power, together with such other and further relief to which they may show themselves justly entitled.

Respectfully submitted,

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By s/s
Leon Jaworski

By s/s
Jefferson D. Giller

CERTIFICATE OF SERVICE

A copy of the foregoing document has been served upon the Public Utility Commission of Texas and all parties of record by mailing copies thereof, first class mail, postate prepaid, this 29 day of July, 1977.

s/s

NO. 261,605

Central Power and Light Company and West Texas Utilities Company	)(	In The District Court of
vs.	)(	Travis County, Texas
The Public Utility Commission of Texas	)(	53rd Judicial District

PLAINTIFFS' THIRD AMENDED ORIGINAL PETITION

TO SAID HONORABLE COURT:

COME NOW Central Power and Light Company ("CPL") and West Texas Utilities Company ("WTU"), Plaintiffs, complaining of the Public Utility Commission of Texas (the "Commission"), Defendant, and for cause of action would respectfully show unto this Honorable Court by this Third Amended Petition the following:

I.

Plaintiff CPL is a Texas corporation, having its principal place of business in Nueces County, Texas. Plaintiff WTU is a Texas corporation, having its principal place of business in Taylor County, Texas. At all times pertinent hereto, both CPL and WTU have been electric utilities engaged in the generation, transmission and sale of electric power.

II.

The Commission is a department and agency of the State Government, organized and existing under the laws of the State of Texas, acting by and through Chairman George M. Cowden and Commissioners Garrett Morris and Alan R. Erwin. Service of process may be had upon the Commission by serving its Secretary at the Commission's offices in Executive Park

Place, 7800 Shoal Creek Boulevard, Austin, Travis County, Texas 78757.

III.

This suit is instituted and prosecuted as a statutory appeal under and pursuant to Tex.Rev.Civ.Stat.Ann. arts. 1446c, § 69, and 6252-13a, § 19, to set aside the Amended Final Order ("Amended Order") of the Commission dated July 11, 1977, and the Interim Order ("Interim Order") dated May 2, 1977, as incorporated in the Amended Order entered in Public Utility Commission Docket No. 14. A copy of the Amended Order and the Interim Order are attached hereto as Exhibits A and B, respectively, and are incorporated herein by reference for all purposes. WTU and CPL timely filed separate Motions for Rehearing of the Interim Order, of the Final Order dated June 2, 1977, ("Final Order") and of the Amended Final Order, thereby exhausting their administrative remedies. WTU and CPL filed their Second Amended Petition within thirty days after the Commission denied their Motion for Rehearing of the Amended Final Order, thereby preserving all their appellate remedies. WTU and CPL ask that the Amended Order and the Interim Order be set aside and held void and, lacking adequate remedy at law, ask that the Commission be enjoined from their enforcement.

IV.

Prior to May 4, 1976, both CPL's and WTU's southern divisions were directly or indirectly electrically connected with other electric systems comprising the Electric Reliability Council of Texas ("ERCOT"), all operating solely within the State of Texas. Early on May 4, 1976, WTU switched the connections in one of its substations to pick up service to loads in three communities in Oklahoma resulting in the transmission and sale for resale of electric power in interstate

commerce. Because WTU and CPL were, and are, interconnected, this transmission and sale for resale of electric power placed both of them under the jurisdiction of the Federal Power Commission ("FPC"), now the Federal Energy Regulatory Commission, pursuant to the Federal Power Act, 16 U.S.C. § 824, et seq. Later on that same day, May 4, 1976, the largest ERCOT members, Houston Lighting & Power ("HLP") and the three subsidiaries of Texas Utilities ("TU"), disconnected from the other ERCOT systems in an attempt to avoid FPC jurisdiction.

V.

In January of 1977, TU, HLP and other intervenors filed motions before the Commission praying for, inter alia, restoration of ERCOT as it existed prior to May 4, 1976, and that CPL and WTU be ordered not to proceed with any construction, installation or acquisition of property for interconnection with any electric utility outside the State of Texas.

VI.

The Commission on May 2, 1977, without an evidentiary hearing on those motions, issued its Interim Order which required WTU and CPL to immediately cease all interstate transmissions and sales for resale of electric power.

Such Interim Order, now incorporated in the Amended Order, is invalid and should be set aside and held void in all respects and the Commission should be enjoined from its enforcement for the following reasons:

1. The Interim Order required WTU and CPL to cease the transmission and sale of electric power in interstate commerce. In so doing, it violated the Commerce Clause, United States Constitution, Article I, Section 8.

2. The Interim Order also violated the Supremacy Clause, United States Constitution, Article VI, because it contravened the Congressional mandate set out in the Federal Power Act, 16 U.S.C. § 824, et seq., that interstate transmission and sales for resale of electric energy are subject to exclusive federal regulation.

3. The Interim Order which required WTU and CPL to cease the interstate transmission of electric power and required WTU to disconnect from certain of its customers exceeded the statutory authority given this Commission under the Public Utility Regulatory Act, Article 1446c.

4. The Interim Order and the findings of fact and conclusions of law contained therein were made upon unlawful procedure in that, among other things, WTU and CPL were not given an opportunity to present evidence in opposition to these findings of fact in violation of section 13(d) of the Administrative Procedure and Texas Register Act. The Commission took "official notice" of "the pleadings and evidence submitted during the several public hearings in said docket, Federal Power Commission Order in Docket No. E-9583, and Docket No. E-9558" in making its findings of fact and conclusions of law. The taking of such "official notice" violated Section 14(q) of the Administrative Procedure and Texas Register Act because it did not afford WTU and CPL an opportunity to contest the material so noticed.

5. The findings of fact made by the Commission in support of its Interim Order were not reasonably supported by substantial evidence because, among other things, it was issued in response to certain motions without holding an evidentiary hearing on those motions. In particular, but without limitation, there was no substantial evidence to support Findings of Fact Nos. 1, 5, 6, 8, 9, 11, 12 and 13.

6. The Interim Order, the findings of fact and conclusions of law contained therein were affected by error of law. The entry of this Order was, in legal contemplation, an abuse of discretion.

VII.

After the Commission issued the Interim Order, it held an evidentiary hearing on the motions and complaints filed by TU, HLP and the other intervenors. At the conclusion of such hearing, the Commission issued a Final Order dated June 2, 1977. Motions for Rehearing were filed by WTU, CPL and others which were ruled upon by the Commission when it issued its Amended Order.

The Amended Order by express terms confirmed and approved the Interim Order and "incorporated" it "by reference." It required WTU and CPL to cease all interstate transportation of electric power and all interstate sales for resale of electric power. It restricted future sales of electric power and imposed an unreasonable and discriminatory burden on interstate commerce. It, therefore, is invalid and should be set aside and held void and the Commission should be enjoined from its enforcement for the following reasons:

1. The Amended Order, like the Interim Order which is incorporated therein, is contrary to the permissible scope of a state public utility regulatory scheme and is inconsistent with the Federal Constitution and Statutes in that it is implemented in such a manner as to effectively bar WTU and CPL from maintaining and continuing any and all transmission in interstate commerce.

2. The Amended Order required WTU and CPL to cease the transmission and sale of electric power in interstate commerce and imposes unreasonable and discriminatory conditions on any future transmission

and sales of electric power in interstate commerce. In doing these things, the Amended Order violates the Commerce Clause, United States Constitution, Article I, Section 8.

3. The Amended Order also violates the Supremacy Clause, United States Constitution, Article VI, because it contravenes the Congressional mandate set out in the Federal Power Act, 16 U.S.C. § 824, et seq., that interstate transmission and sale for resale of electric energy are subject to exclusive federal regulation.

4. The Amended Order, in requiring WTU and CPL to cease the interstate transmission of electric power and to disconnect from certain of its customers, and in imposing unreasonable and discriminatory conditions on future interstate transmission and sales of electric power in interstate commerce exceeds the statutory authority given this Commission under the Public Utility Regulatory Act, Article 1446c.

5. The Amended Order is supported by findings of fact which are not reasonably supported by substantial evidence. In particular, but without limitation, there is no substantial evidence in this record to support Findings of Fact Nos. 4, 6-12, 15, 17-25, 27, 28, 29, 31, 32, 34, 36, 37, 40 and 45.

6. The conclusions of law made by the Commission in support of its Amended Order are erroneous and affected by error of law. In particular, but without limitation, Conclusions of Law Nos. 3, 4, 6 and 8 are invalid because they are affected by error of law and violate constitutional and statutory provisions.

7. Further, entry of the Amended Order was, in legal contemplation, an abuse of discretion.

WHEREFORE, premises considered, CPL and WTU pray that (1) Defendant be cited to appear and answer

herein; (2) upon final hearing the Commission's July 11, 1977, Amended Order and its May 2, 1977, Interim Order as incorporated therein be held invalid, unlawful and void, and be set aside insofar as they order CPL and WTU to disconnect and refrain from interstate connections, transmissions or sales of electric power; (3) the Commission be permanently enjoined from enforcing the Amended Order and the Interim Order insofar as they order CPL and WTU to disconnect and refrain from interstate connections, transmissions or sales of electric power; (4) Plaintiffs have their costs of court; and (5) for such other and further relief, at law or in equity, general or special, to which Plaintiffs may be justly entitled.

Respectfully submitted,

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By s/s
Jefferson D. Giller

CERTIFICATE OF SERVICE

Copies of the foregoing document have been served upon all parties to these proceedings and to all parties of record to Public Utility Commission Docket No. 14 this 18th day of July, 1978, by certified mail, return receipt requested.

s/s
L. S. Zimmerman

VERIFICATION

THE STATE OF TEXAS §

COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, personally appeared Jefferson D. Giller, whose name is subscribed to the foregoing instrument, and acknowledged to me that all statements of fact contained therein are true and correct.

s/s

SUBSCRIBED and SWORN to this 17th day of July, 1978.

s/s
Notary Public in and for
Harris County, Texas

Elizabeth B. Gaffney