

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

UNION LIGHT AND POWER
COMPANY OF CUBA

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0330

Decision No. CU -286

Counsel for claimant:

Mayer, Friedlich, Spiess,
Tierney, Brown & Platt
By Joseph M. Weil, Esq.

AMENDED PROPOSED DECISION

Under date of September 20, 1967, the Commission issued a Proposed Decision denying this claim on the ground that claimant had failed to sustain the burden of proof. Subsequently, claimant submitted a substantial amount of supporting evidence.

Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be amended to read as follows:

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by UNION LIGHT AND POWER COMPANY OF CUBA, in the amount of \$1,500,000.00, based upon the asserted loss of certain personal property in Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of the State of Delaware. It appears that claimant had borrowed large sums of money in 1929 and had used all of its outstanding stock as collateral. Upon default and foreclosure, the creditor, also a Delaware corporation, acquired title to said stock. In turn, this creditor corporation had pledged the stock of claimant as collateral for its own promissory notes to a certain group of noteholders, referred to as the Committee. In 1933, this Committee acquired title to all of claimant's stock upon default with respect to the said notes, and entries were made in the stock transfer records of claimant to show such ownership by the Committee. The former noteholders who were members of the Committee thus acquired stock interests in claimant in direct proportion to the percentages their creditor interests bore to the total indebtedness of claimant, the principal amount of which was \$1,355,000.00 in 1933.

The largest single member of the Committee, the Continental Illinois National Bank and Trust Company of Chicago, owning in excess of 70% of

claimant's stock, has certified, through one of its officers, that it was organized under the laws of the United States and that over 75% of its outstanding capital stock was owned by nationals of the United States. Other evidence of record establishes that all of the members of the Committee have been nationals of the United States at all pertinent times. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record indicates that claimant operated an electric utility company, not organized as a legal entity, which furnished electric power in Oriente Province, Cuba. In connection with these operations, claimant owned electric generating plants, power transmission lines, meters, materials and supplies, and other necessary equipment, as well as bank accounts, and accounts receivable from Cuban customers and the Government of Cuba who used claimant's electricity.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution 3 pursuant to Law 851, which listed as nationalized the UNION LIGHT AND POWER COMPANY OF CUBA. The Commission finds that all of claimant's properties in Cuba were nationalized on October 24, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is

designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i.e., fair market value, book value, going concern value, or cost of replacement.

Claimant asserts that its assets in Cuba had an aggregate value of \$1,500,000.00, and submits the following in support of its assertion:

1. Certain written reports in 1954 and 1956 to the effect that offers had been made to purchase claimant's assets in Cuba for approximately \$500,000.00;

2. A written report in January 1960 that claimant's representative in Cuba had offered to sell claimant's assets for approximately \$1,000,000.00;

3. An affidavit, dated March 4, 1968, from claimant's former general manager of its business in Cuba, stating that in September 1960, when the nationalization of claimant was being proposed by Cuba, a Cuban Government official offered to compensate claimant for its properties in Cuba in the amount of \$1,010,000.00 in the form of 4% bonds.

The record, however, contains no written offer of a definite amount from any prospective purchaser, and it appears that in 1954 the Committee passed a resolution authorizing the sale of the assets for \$500,000.00 "or better".

Included in the record are interim statements of income and balance sheet figures for each of the months from July 1959 through February 1960; audited balance sheets for the periods ending June 30, 1957, June 30, 1958, and June 30, 1959, as well as related profit and loss statements. A balance sheet as of February 29, 1960, prepared from these interim figures discloses the value of claimant's assets as follows, which has been certified by an officer of claimant as fairly representing claimant's financial condition at that time:

Cash	\$ 41,431.97	
Less amount maintained in a bank in the United States	<u>300.43</u>	
Net cash in Cuba		\$ 41,131.54
Accounts receivable (from Cuban nationals)		75,504.90
Materials and supplies		20,965.73
Debts owed by Cuban Government and Municipalities for electricity supplied		78,603.25
Deferred Charges		25,321.74
Other assets		69,126.19
Investments		1.00
Properties, plants and equipment	\$1,050,081.55	
Less reserve for depreciation	<u>529,609.59</u>	
Net properties, plants and equipment		<u>520,471.96</u>
Total Assets		<u>\$831,126.31</u>

In an affidavit, dated January 16, 1969, an officer of claimant has stated that the amount claimed includes all "intangibles," and that the assets shown in the interim balance sheet of February 29, 1960 did not include any amounts for "franchises and licenses." The record, however, contains nothing that would either indicate the nature of these intangibles, franchises and licenses, or establish their value on the date of loss. Moreover, no such items are included in the audited balance sheets of June 30, 1957, June 30, 1958, or June 30, 1959.

Said three balance sheets were accompanied by explanatory statements, one of which was repeated on each occasion. The auditors stated that they were unable to express an opinion concerning the values appearing in the three balance sheets for the properties, plants and equipment inasmuch as no depreciation had been taken for the transmission lines and certain fully-depreciated items were included. Claimant's explanation with respect to

the transmission lines was that depreciation for such property was not allowed as a deductible expense for Cuban income tax purposes, which fact was corroborated by the auditors. It does not appear that the financial picture of claimant as of February 29, 1960 is distorted by the inclusion of fully-depreciated items because such depreciation apparently was part of the reserve for depreciation, which reduced these assets by more than 50% as of February 29, 1960.

Having fully considered all the evidence of record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that reflected in the interim balance sheet as of February 29, 1960. Although that financial statement was not audited, it appears upon comparison with the three audited balance sheets, and particularly the latest one as of June 30, 1959, that the values set forth in the balance sheet as of February 29, 1960 fairly represent the financial condition of claimant, as stated by an officer of claimant. With respect to claimant's transmission lines located in Cuba, the Commission finds no valid basis for reducing the value thereof on account of depreciation because the laws of Cuba prohibited depreciation of such property for income tax purposes. Inasmuch as the Commission's statutory duty is to determine, inter alia, the value of property in Cuba on the date of loss, the Commission holds that any reduction for depreciation of claimant's transmission lines under the circumstances would not be appropriate to the property or equitable to the claimant. Accordingly, no reduction in the value of said property on account of depreciation is made.

There being no evidence to establish the nature of the intangibles, franchises and licenses, or to establish their value on the date of loss, that portion of the claim is denied.

The Commission finds that the aggregate value of claimant's assets in Cuba on October 24, 1960, the date of loss, was \$831,126.31. It appears from the balance sheet of February 29, 1960 that claimant was indebted to Cuba for taxes in the amount of \$10,155.82. The Commission has held that in a claim against Cuba under Title V of the Act, an amount due the Republic of Cuba for taxes should be applied in reducing the amount of loss sustained, on the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.)

Accordingly, the Commission finds that the net loss sustained by claimant within the meaning of Title V of the Act was the amount of \$820,970.49.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that UNION LIGHT AND POWER COMPANY OF CUBA suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Eight Hundred Twenty Thousand Nine Hundred Seventy Dollars and Forty-nine Cents (\$820,970.49), with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D. C., and entered as the Amended Proposed Decision of the Commission

FEB 19 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Amended Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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OF THE UNITED STATES
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IN THE MATTER OF THE CLAIM OF

UNION LIGHT AND POWER COMPANY OF CUBA

Claim No. CU-0330

Decision No. CU - 286

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Mayer, Friedlich, Spiess, Tierney, Brown
& Platt BY: Joseph M. Weil, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,500,000.00, was presented by UNION LIGHT AND POWER COMPANY OF CUBA and is based upon the asserted loss of corporate assets located in Cuba.

An officer of claimant corporation has certified that the company was incorporated in the State of Delaware in 1929.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964) 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

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Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Evidence of record supporting this claim, filed August 9, 1965, indicated that the capital stock in claimant corporation was owned at all times from February 18, 1933, to the date the claim was filed by "Noteholders' Protective Committee for Two Year Six Percent Gold Notes of Associated Power and Light Corporation", described by an officer of claimant corporation as "a presently extinct Delaware corporation." While an officer of claimant corporation certified that all of the members of the Protective Committee were nationals of the United States, no evidence was submitted to establish their nationality. Accordingly, by Commission letter of July 11, 1966, claimant corporation was advised, through counsel, as to the type of evidence proper for submission to establish this claim under the Act. Further suggestions were made in Commission letters dated October 14, 1966, November 16, 1966, and January 20, 1967. No additional evidence was submitted in response to these letters.

On June 14, 1967, counsel was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. Although counsel has since corresponded with the Commission, no evidence has been submitted.

The Commission finds that claimant corporation has not met the burden of proof in that it has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

SEP 20 1967

Edward D. Re

Edward D. Re, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

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CU-0330