

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

IN THE MATTER OF THE CLAIM OF

CUBAN ELECTRIC COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 2578

Decision No. CU 4122

Counsel for claimant:

Reid & Priest  
By Richard G. Allison, Esq.

Appeal and objections from a Proposed Decision entered October 21, 1969.  
Oral hearing requested.

Oral hearing held on June 4, 1970.

FINAL DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for an amount in excess of \$323,000,000.00 was presented by CUBAN ELECTRIC COMPANY based upon asserted losses resulting from the nationalization of its assets in Cuba.

By Proposed Decision dated October 21, 1969, the Commission found that claimant qualified as a national of the United States, that its assets in Cuba were nationalized by the Government of Cuba on August 6, 1960, and that claimant had sustained a loss under Title V of the Act in the amount of \$266,513,667.40. Portions of the claim for the following items were denied:

Debt of Cuban Government	\$ 700,000.00
Liability to Suppliers	499,186.69
Loss on equipment and supplies	2,138,614.39
Preservation of assets	185,297.00
Resettlement of employees	314,866.90
Funding retirement plan	599,663.00

In addition, a deduction from the total value of claimant's Cuban assets (\$319,367,165.95) for taxes (\$2,865,397.00), liabilities under Labor Laws for Employees Sickness Fund (\$322,142.00), debt to Financiera Nacional de Cuba (\$37,920,000.00), and mortgage bonds (\$11,745,959.55) was made to determine claimant's actual losses.

Claimant filed objections to the Proposed Decision, objecting specifically to the denial of the items set forth above and to the deductions and set-offs applied to the total value of its assets. At an oral hearing on June 4, 1970, argument was made by counsel for claimant and further written argument submitted after the hearing.

On the basis of the oral argument, the Commission now finds that claimant sustained an additional loss in the amount of \$1,054,746.22 for equipment and supplies as the result of the nationalization of its assets by the Government of Cuba on August 6, 1960.

Concerning the debt of the Cuban Government which claimant had listed under "Investments in Cuba", claimant has not established that this debt was an enforceable debt on January 1, 1959 although listed as an asset on claimant's records. It appears that this amount had been owed since prior to 1948 and claim therefor must be denied. As for the losses claimed for equipment unsold and not nationalized, since it was in the United States, and the preservation of the same, the Commission is not persuaded that such items are within the scope of Title V of the Act and the denial of these items is affirmed. As for the payments to former employees and the funding of the pension account, although commendable, the Commission finds that they are not compensable or certifiable as a loss within the purview of Title V of the Act.

Claimant also argued against the deduction from the value of its Cuban assets of liabilities to Cuban governmental agencies, taxes, and mortgage bonds certified as losses to other claimants under Title V. It is contended that the Commission should restrict itself to determining only the value of the assets lost and leave the application of set-offs or deductions to such time as a fund is available for payment of claims. However, the Commission has a mandate to determine the losses of United States nationals as a result of the actions of the Government of Cuba, and since the actions of the Government of Cuba concerning claimant took place on August 6, 1960, the value of the claim against Cuba is determined as of that date. To determine the value of a claim, any set-offs and deductions must be applied now, not reserved for future consideration. Further, set-offs have been consistently deducted by this Commission on claims for nationalized property, when applicable, since the Yugoslav Claims Agreement of 1948. (See Claim of Helen Devich, Claim No. Y-697, Decision No. Y-800.)

Claimant based further argument against deductions on computations illustrating the recovery for stockholders and creditors with and without deductions if Cuba should pay 50% or 75% of the total losses. Again, however, the Commission's determination concerns the amount of loss sustained as of August 6, 1960, the date of nationalization, which amount is definite and not subject to adjustment on the basis of any subsequent agreement.

Accordingly, the Commission concludes that claimant sustained the additional loss of \$1,054,746.22 for a total loss of \$267,568,413.62, on August 6, 1960 within the meaning of Title V of the Act.

The certification of loss, as restated below, will be entered, and in all other respects the Proposed Decision is affirmed.


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CERTIFICATION OF LOSS

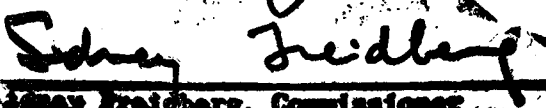
The Commission certifies that Cuban ELECTRIC COMPANY sustained a loss, as a result of actions by the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Sixty-seven Million Five Hundred Sixty-eight Thousand Four Hundred Thirteen Dollars and Sixty-two Cents (\$267,568,413.62) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

**AUG 19 1970**

  
Lyle S. Carlock, Chairman

  
Theodore Jaffe, Commissioner

  
Sidney Freidberg, Commissioner

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

IN THE MATTER OF THE CLAIM OF

CUBAN ELECTRIC COMPANY

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2578

Decision No. CU-4122

Counsel for claimant:

Reid & Priest  
by Richard C. Allison, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by CUBAN ELECTRIC COMPANY for \$323,570,419.38.

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 Cuban Electric was organized under the laws of the State of Florida in 1927, and that in 1960 there were 3,600,011 shares of common stock outstanding, of which 3,158,806 were owned by American & Foreign Power Company Inc. and 291,261 were owned by other persons whose addresses were in the United States. The record further shows that American & Foreign Power Company Inc. (since merged into Ebasco Industries Inc. and subsequently into Boise Cascade Corporation) had 7,312,526 shares outstanding on August 6, 1960 of which 0.17% was held by non-residents of the United States and 50.3% by the Electric Bond and Share Company which was owned at least 97% by United States nationals at all times. The Commission holds that CUBAN ELECTRIC COMPANY qualifies as a national of the United States within the meaning of Section 502(1)(B) of the Act.

Evidence establishes that claimant, beginning in 1928, acquired properties of small utility companies in Cuba. In 1960 it provided more than 90% of all electricity sold in Cuba and furnished manufactured gas in the City of Havana. The company had expanded its services in the period from 1950 to 1959 and spent a total amount of \$189,192,603.00 during that time for construction of additional facilities and improvements. A total of 6,619 miles of power lines of all voltages was in service throughout the Island at the end of 1959.

The claimant operated two electrical systems in Cuba, the Western System and the Eastern System. The Western System was the larger and included the City of Havana. Its generating stations were:

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Consolidated Steam Electric Station on Havana Bay in Havana,  
Regla Steam Electric Station in the Community of Regla,  
Rincon de Melones Steam-Diesel Electric Station on Havana Bay,  
Matanzas Steam Electric Station on Matanzas Bay,  
O'Bourke Steam Electric Station on Cienfuegos Bay,  
Cienfuegos Steam Electric Station in the City of Cienfuegos,  
Ciego de Avila Diesel Electric Station, sixty miles west of Camaguey,  
Vicente Steam Electric Station, six miles east of Ciego de Avila, and  
Camaguey Steam Electric Station at Camaguey.

The Western System also had substations at Naranjito, Colon, Diezmero, Principe, Rincon, San Augustin, Santa Clara, and Tropical.

The Eastern System was centered around Santiago and its generating stations were:

Santiago Steam Electric Station on Santiago Bay,  
Manzanilla Diesel Electric Station, 100 miles west of Santiago, and  
Guaso Hydro Electric Station, 50 miles northeast of Santiago.

On the outskirts of Havana, on Rancho Boyeros Highway, claimant owned the Capdevila Service Center, which contained the general offices of the claimant, a garage, electric meter shop, gas meter shop, transformer, mechanical and carpentry shops, central warehouse and stores. It also owned nine mobile power units and approximately 425 trucks and jeeps.

The Havana Gas System which sold manufactured gas in the City of Havana consisted of a generating plant, storage capacity, street boosters and a distribution system. The distribution system had 230 miles of mains and served approximately 55,000 customers.

On August 6, 1960, the Government of Cuba issued Resolution No. 1 which listed as nationalized the CUBAN ELECTRIC COMPANY (Compania Cubana de Electricidad), pursuant to Law 851 of July 6, 1960. The Commission therefore finds that claimant's properties in Cuba were nationalized on August 6, 1960, as a result of which claimant sustained a loss within the meaning of Title V of the Act.

Claim is made herein for losses sustained by CUBAN ELECTRIC COMPANY as follows:

1. Utility Plant	\$285,266,482.00
2. Investments in Cuba	1,957,756.40
3. Current Assets	30,244,140.00
4. Deferred Debits	2,364,413.00
5. Liability to Suppliers	499,186.69
6. Loss on Sale of Equipment & Supplies	1,054,746.22
7. Unsold Equipment	1,083,868.17
8. Preservation of Assets	185,297.00
9. Resettlement of Employees	314,866.90
10. Funding Retirement Plan	<u>599,663.00</u>
Total	\$323,570,419.38

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". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

In support of the claim, claimant has submitted a copy of its Annual Report for the year ending December 31, 1959, a Financial Report with a balance sheet for February 29, 1960; copies of records concerning inventories of equipment purchases, sales, investments and supplies, and affidavits of former employees of claimant and the American & Foreign Power Company Inc. The record also contains copies of balance sheets for 1957 and 1958, a report of the Cuban Rate Investigation Commission, and claimant's memorandum concerning the 1959 rates and report of that Commission.

#### 1. Utility Plant

Under the heading "Utility Plant", claimant makes claim for all land, buildings, machinery, vehicles, equipment and construction work in progress. The amount claimed, \$285,266,482.00, is the adjusted book value of the plant



for August 6, 1960, the date of nationalization. According to the latest balance sheet submitted, the value of the plant on February 29, 1960, was \$345,687,423.00. In order to arrive at the claimed amount of \$285,266,482.00, a depreciation reserve of \$52,337,238.00 was deducted, and further adjustments were made for charges incurred and credits taken in the period from February 29, 1960 to August 6, 1960. The Commission finds that this method of arriving at the total claimed is fair and equitable and is supported by a preponderance of the evidence in the record, even though there is included in the evidence a report of the Cuban Rate Investigation Commission which had been appointed by the Castro Government in Cuba to determine electric and gas rates for CUBAN ELECTRIC COMPANY. That body made a finding as to the value of claimant's property for a rate base. This, however, is not a determination of the market value of the company but was an attempt to put as low a value as possible on the assets as a basis for lowering utility rates.

The Commission therefore finds that the value of the Utility Plant on August 6, 1960 is the adjusted book value of \$285,266,482.00.

2. Intangibles

Claimant asserts a loss in the amount of \$1,957,756.00 for "investments in Cuba". This item, comprising certain debts and advances as well as investments, is carried at book value in the balance sheet of February 29, 1960 in the amount of \$2,173,290.70. The claim as presented is for the asserted value of the items, as follows:

1. Vedado Tennis Club Mortgage Bonds	\$ 5,000.00
2. Country Club de Santiago Stock	500.00
3. Camaguey Country Club Bonds	500.00
4. Compania de Publicacion "El Dia" Bonds	5,000.00
5. City of Matanzas - 8% Gold Bonds	3,226.82
"    "    "    "    "    "    "    "    "	727.73
6. Julio Cesar Hidalgo & Cia. Stock	100.00
7. Havana Biltmore Yacht & Country Club Series A Stock	1,000.00
"    "    "    "    "    "    "    "    "    "    "    "	1,000.00
8. Gremio de Obreros y Mareantes - Advances	10.00
9. Acueducto de Santa Maria - Debt	371.84
10. Autobuses Modelo, S.A. - Preferred Shares	72,000.00
11. Cooperativa de Repartos Electricos - Advances	122,094.26
12. Ministerio de Comunicaciones - Bonds	1,000.00
13. Advances to Employees	789,519.00
14. Financiera Nacional de Cuba Stock	2,000.00

15. Ferrocarriles Occidentales de Cuba Stock Series B	\$ 102,400.00
16. Debt of Cuban Government	1,721,395.70
17. Land, "La Puntilla"	100,101.45
18. Cia. Inmobiliaria "La Torre, S.A." Stock	4,000.00
19. Ministerio de Educacion, Bonds	12,500.00
20. Veteranos, Tribunales y Obras 4% Bonds	89,500.00
21. Bandes 4%, Total Bonds	112,500.00
22. Compania Financiera de Transporte - Debt	<u>144,000.00</u>
Total	\$3,290,446.80

Claimant states that the Cuban Government obtained physical possession of all the securities and evidences of title for the above listed items. The Commission finds that claimant was the owner of these assets, and, on the basis of the evidence of record and other evidence available to the Commission, that the loss suffered by claimant in this regard is the amount set forth above with the following exceptions:

- (a) Havana Biltmore Yacht and Country Club Series A stock which has been determined to have the value of \$3,500.00 per share in the Claim of Arman E. Becker, Jr., Claim No. CU-1094. Thus the loss for two shares of such stock is \$7,000.00.
- (b) Ferrocarriles Occidentales de Cuba Series B stock which is determined to have a value of \$20,479.85. This was the amount stated by claimant in its balance sheet of February 29, 1960 to have been the market value of such securities. This figure is adopted by the Commission rather than the \$102,400.00 set forth above. This company was a mixed-economy corporation whose shares were owned by the Cuban Government as well as private interests. Certain taxes were forgiven its shareholders.
- (c) Debt of the Cuban Government in the amount of \$1,721,395.70 which represents a sum due prior to 1948 is deducted. Inasmuch as this debt did not arise after January 1, 1959, claim for this item must be denied.

The Commission has previously determined the values for Financiera Nacional de Cuba stock, Bandes Bonds, Veteranos, Tribunales y Obras 4% Bonds and Cia. Inmobiliaria "La Torre, S.A." stock, to be the same as those claimed herein. Compania Financiera de Transporte which owed \$144,000.00 to the claimant was nationalized on August 29, 1960 and that sum would therefore be certified as a debt of a nationalized enterprise. The remaining items are determined by the Commission to have the values stated above.

Accordingly, the Commission finds that the aggregate value of the loss sustained by claimant for these intangibles on August 6, 1960 was

\$1,492,130.95.

3. Current Assets

According to the February 29, 1960 Balance Sheet, Current Assets amounted to \$31,839,173.00. Since claimant operated its business until August 6, 1960, the date of loss, it is necessary that the amount be adjusted to reflect the subsequent activity.

On the basis of the record the Commission finds the Current Assets on August 6, 1960 to have been as follows:

Cash		\$ 1,075,757.00
Special Deposits		7,348.00
Working Funds		593,914.00
Accounts Receivable		
General	\$ 7,425,270.00	
Municipal & Other Government	15,252,197.00	
Miscellaneous	1,812,197.00	24,489,721.00
Interest & Dividends Receivable		2,530.00
Materials & Supplies		3,545,473.00
Prepayments		<u>529,397.00</u>
	Total	\$30,244,140.00

4. Deferred Debits

Claim is made for the amount of \$2,364,413.00 for deferred debits, comprising unamortized expenses incurred in connection with debt and stock issues for the printing of indentures, engraving, notarial and registration fees in Cuba and Cuban revenue stamps.

On the basis of the record, the Commission finds that claimant sustained a loss in the amount of \$2,364,413.00 for deferred debits.

5. Other Asserted Losses

Claimant has further asserted claim in the aggregate amount of \$3,737,627.98 for losses entitled Liability to Suppliers, Loss on Sale of Equipment and Supplies, Unsold Equipment, Preservation of Assets, Resettlement of Employees, and Funding Retirement Plan. The record shows that, at the time of the taking of its properties in Cuba, claimant had in hand in

the United States or on order certain types of equipment built specifically for use in Cuba. Because of the taking, claimant cancelled many orders and continued to hold those items which had been completed in storage in the United States. Claimant has continuously tried to dispose of the new equipment but because of the particular design and engineering several of the pieces are still in claimant's possession. One sale was made as late as September, 1968 in claimant's endeavor to reduce its losses. In addition to the monetary loss for the equipment purchased, claimant incurred and continues to incur the expense of warehousing, shipping, and insuring the equipment in its possession in the United States.

Concerning the resettlement of employees and the retirement plan, claimant asserts that it was required to make payment to its former employees in 1960, 1961, 1962 and 1963 in the form of severance payments and other forms of assistance and to make annual payments in the form of supplemental pensions to retired employees and dependents. The amount of pension was increased also because the pensioners were not paid any benefits formerly received from the Cuban Government for Social Security and claimant made up the difference. Claimant borrowed the necessary funds for these auxiliary payments from its parent company. There is no evidence of record that any of the payments to employees was for property taken or losses sustained as a result of actions by the Government of Cuba.

In considering these portions of the claim, the Commission must determine whether such losses are certifiable under Title V of the Act.

Section 501 of the Act states:

It is the purpose of this title to provide for the determination of the amount and validity of claims against the Government of Cuba which have arisen since January 1, 1959, out of nationalization, expropriation, intervention, or other takings of, or special measures directed against, property of nationals of the United States, . . .

This Section and Section 503(a) of the Act, supra, both refer to losses from the taking of property. The record is clear that claimant has sustained these losses for machinery and equipment ordered but not delivered to its Cuban locations and for the treatment of its employees by the Cuban

Government. The basis, however, of these two parts of the claim is not for property taken by the Government of Cuba but for losses resulting indirectly from other actions of the Government. The Commission, therefore, finds that these losses are not within the purview of Title V of the Act. Accordingly, these portions of the claim are denied.

The Commission consequently finds that the value of the nationalized assets of CUBAN ELECTRIC COMPANY on August 6, 1960 were:

Plant	\$285,266,482.00
Intangibles	1,492,130.95
Current Assets	30,244,140.00
Deferred Debits	<u>2,364,413.00</u>
Total	\$319,367,165.95

#### 6. Deductions

The record shows that claimant was indebted to the Cuban Government and its agencies for taxes in the amount of \$2,865,397.00 and for liabilities under the Labor Laws for Employees Sickness Fund in the amount of \$322,142.00. According to the balance sheets, claimant was also indebted to the Financiera Nacional de Cuba in the amount of \$37,920,000.00.

The Commission has held in the Claim of Phoenix Insurance Company, Claim No. CU-1913, that Financiera Nacional de Cuba was a semi-public entity controlled by the National Bank of Cuba, an agency of the Government of Cuba. Inasmuch as the debt to the Financiera Nacional de Cuba is actually a debt to the Government of Cuba, claimant's liability for taxes and the above-mentioned debt in the total amount of \$41,107,539.00 must be deducted under the theory of set-off. (See Claim of Simmons Company, Claim No. CU-2303.)

The Commission has previously certified a loss in the amount of \$11,745,959.55 to the Boise Cascade Corporation, formerly Ebasco Industries, Claim No. CU-3548, for the loss of certain bonds secured by mortgages on properties of the CUBAN ELECTRIC COMPANY in Cuba. Consequently, \$11,745,959.55 must also be deducted from the asserted loss claimed herein.

Accordingly, the Commission finds that the losses sustained by CUBAN ELECTRIC COMPANY as a result of the nationalization of its assets by the Government of Cuba on August 6, 1960 amounted to \$266,513,667.40.

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 claim it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that CUBAN ELECTRIC COMPANY sustained a loss, as a result of actions by the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Sixty-six Million Five Hundred Thirteen Thousand Six Hundred Sixty-seven Dollars and Forty Cents (\$266,513,667.40) with interest at 6% per annum from August 6, 1960 to the date of settlement.

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

**OCT 21 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 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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