

MINUTES

SPECIAL MEETING OF THE

BOARD OF REGENTS

OF

THE TEXAS A&M UNIVERSITY SYSTEM

HELD AT

COLLEGE STATION, TEXAS

MARCH 3, 1995

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***MINUTES OF THE
SPECIAL MEETING OF THE BOARD OF REGENTS
MARCH 3, 1995***

Ms. West convened the special meeting of the Board of Regents of The Texas A&M University System, on March 3, 1995 at 10:04 a.m. in the Board of Regents Meeting Room, on the campus of Texas A&M University, College Station, Texas.

The following members of the Board were present:

Ms. Mary Nan West, Chairman
Mr. Raul B. Fernandez, Vice Chairman
Mr. Bill Clayton
Mr. John H. Lindsey
Mr. T. Michael O'Connor
Ms. M. Guadalupe L. Rangel

The following member of the Board monitored the meeting by telephone:

Ms. Alison Brisco

The following members of the Board were not present:

Mr. Gerald J. Ford
Mr. Royce E. Wisenbaker

Ms. West said the special meeting was called to consider two items. Ms. West said the first item dealt with the proposed merger with the East Texas State University Complex (ETSUC). Ms. West said that she did not anticipate any action being taken on this item but she would ask Mr. O'Connor, Chairman of the Committee to Study the East Texas State University Initiative, to present a report to the Board on this matter. She said she understood that Dr. Barry B. Thompson, Chancellor of The Texas A&M University System (TAMUS), and Mr. Dick Lindsay, Vice Chancellor for Finance and Operations, wanted to present part of this report in closed session. Ms. West said the second item was to consider whether to proceed with non-binding alternative dispute resolution with regard to claims arising from the development agreement between the Board of Regents and Tenneco Power and Generation Company. Ms. West called on Mr. O'Connor for his report.

Mr. O'Connor said on Thursday, March 2, that he, John Lindsey, Dick Lindsay and Tami Sayko toured the campuses of ETSUC. Mr. O'Connor distributed informational material to the regents. He said they first went to Texarkana to look at the facilities. He said ETSU has an upper-level division in conjunction with the junior college in Texarkana as well as a dual-owned building in Texarkana on the campus with the junior college. He said officials from the Texarkana campus toured them around and showed them the facilities. Mr. O'Connor said they met some of the students as well as some of the professors. He said they were very impressed with the condition of the building as well as the operation in Texarkana. He said after that they departed and went to the Commerce campus where they met with officials. He said they looked at facilities and met with Mr. Tim Donathen, Facilities Planning and Building, who was also in the Commerce area. He said they talked to the faculty, students, administration and discussed various issues anywhere from the economy, to finances, to the condition of the buildings. Mr.

O'Connor then called on Mr. Dick Lindsay, Vice Chancellor for Finance and Operations, to make some comments on some of the details. Mr. O'Connor reminded the Board that this was strictly preliminary as far as the Committee was concerned as it was their first exposure to ETSUC.

Mr. Lindsay said they had sent teams of financial and facilities people to the campuses. He said the facilities team's report is that the physical plant facilities are in good, well kept condition. They found no problems of significance. They looked at electrical, the HVAC, the elevators, ADA compliance, the grounds, space utilization and energy efficiency. Mr. Lindsay said the school is over a 100 years old, so obviously there are some old buildings there, but they are all well maintained. He said the infrastructure is well maintained. He said there were five projects identified as deferred maintenance projects with the Coordinating Board and they are working on all five projects today and will very shortly have them completed. Mr. Lindsay said their steamed and chilled water facilities and their physical plant are in good shape. He said there were absolutely no deal killers whatsoever. He said they found the people that they dealt with to be knowledgeable, cooperative and all had longevity with their institution and were very enthusiastic.

Mr. Lindsay said when they were in Texarkana they interviewed a gentleman named Dr. John Anderson. He said everybody had a lot of questions for Dr. Anderson, from a number of different perspectives, and he fielded every one of them with polish, candor and knowledge. Mr. Lindsay said the same thing happened at Commerce. He said he has had the opportunity to spend some time on the fiscal side, as has Ms. Linda Johnson, System Controller, and Mr. Greg Anderson, System Treasurer. Mr. Lindsay said they found that there were no significant commitments, contingent liabilities, pending lawsuits, workers compensation claims, leases or any outstanding obligations that were of consequence whatsoever. He said they have two lawsuits. Mr. Lindsay said he has asked for the last five years internal and external audit reports. They have not made those available yet but they assured Mr. Lindsay that they would. They told Mr. Lindsay that there was nothing of consequence in any of those audit reports. He said they now have \$880,000 of long-term debt outstanding. They haven't borrowed any money since 1975. Their debt coverage was 100 times. Debt is not an issue. Mr. Lindsay said they looked at enrollment and over the last five years, although enrollment has gone down on both campuses, in 1995 relative to 1994, it has really plateaued at one campus. They have had around 8,000 students for the last five years and at the other campus they have had about 1,200 students for the last five years.

Mr. O'Connor said the Committee would like to continue to get some demographics and some economics of what is going on in these two communities. He said in Texarkana, the base there is on the closure list, which has about 4,000 employees and about \$130 million in revenues for the community. He said Texarkana and the community are split between Texas and Arkansas. The total population of Texarkana is 50,000 and services another 50,000 in the area. Mr. O'Connor said he would come back to the Board and try to give it a full summary of each item, inclusive of the demographics.

Mr. O'Connor said one of the reasons why there was a downturn in enrollment in the Texarkana area is that it feeds a lot of students from Arkansas and Oklahoma. There was legislation which allowed students from those other states, if they had gone to the junior college, to be eligible for in-state tuition. Mr. O'Connor said that legislation was changed and that is where the downturn of the students was, relative to Texarkana. Mr. Lindsey said there were also some requirements for teaching in the Texarkana area that they dropped. Those teachers got those courses from the graduate school there at Texarkana and that was one of the biggest reasons

that the student population dropped off at Texarkana. He said it got up to 1,400, but it is down to 1,100 now.

Mr. Lindsay said he thought their relationship with the community college was quite good. He said they seem to work in a collaborative and cooperative manner quite well. They also were projecting a \$300,000 deficit in 1995 business and their budget is based on the premise that they were cutting into reserves to do that. Mr. Lindsay said he was impressed with the fact that they are taking definitive actions and had already implemented definitive actions to deal with those reductions. He said they closed down their continuing education group and eliminated a few FTEs. They weren't just sitting around complaining. They were running mean and lean.

Mr. Lindsay said the banking side was interesting. He said he was not talking about investments or savings through common services or anything like that. Mr. Lindsay said he thinks that TAMUS can save them \$11,000 a month in banking services alone. That is based on about 15 minutes worth of review. He said he was sure that there were many other savings that TAMUS can bring to the school. He said their athletic programs, about \$800,000 a year, are funded almost exclusively through student fees. They don't use any educational and general (E&G) money, directly or indirectly, and they didn't seem to feel that they had any major gender equity issues.

Mr. Lindsay said it was obvious that there were numerous programs where collaborative efforts would benefit. He said twenty percent of the student population at ETSU is non-Caucasian. Ms. Rangel asked what about the administration. Mr. Lindsay said he thought it was around 7 to 8 percent. Mr. O'Connor said that was in Texarkana. It was a larger number in Commerce. Mr. O'Connor said they got into name and tenure issues. No promises were made to them with regards to funds and resources. Mr. Lindsay said they have a post tenure review on an annual basis. Ms. West said she thought that annual review was a very good program. She said it also depends on who is doing the review. Mr. Lindsay said that one of two lawsuits that Ms. Sayko referred to earlier, had to do with the termination of a tenured faculty member.

Mr. Lindsay said they had a utility conservation report and the school in Texarkana was rated number 1 in the State on utility conservation. He said in the area of privatization, there has been only one contract in the two schools for privatization and that is for ARA food services who they have used for 35 years. Mr. Lindsay said unrelated business income is not an issue. They don't file tax returns because they don't have any. He said there has been an issue about derivatives and East Texas. He said there is no question that East Texas was among the eight schools singled out by the State Auditor for having been caught in the derivatives mess. He said they were very upfront and have given every detail to Mr. Lindsay and his staff. He said they have had Moody's come in and do a credit rating analysis of the university subsequent to the derivatives. That analysis is dated January 15, 1995, and it still rates ETSU as an "A" rated university and gives very high marks relative to liquidity in everything else, even given the fact that all those derivatives are written down. Mr. Clayton said he understood that their cash flow was such that they don't have to sell at a loss. He said they could hold those derivatives until the market is right. Mr. Lindsay said he thought that was right, but you never know. He said they also brought in First Southwest to look at what they should do relative to their derivatives. He said First Southwest and Moody's agree with the staff and Mr. Clayton, that to have a fire sale and get rid of those derivatives in today's market would not be prudent. Mr. O'Connor said only if it shows that the derivatives would continue to go down in value, then you need to at least salvage something from it. Mr. Lindsey said some of the derivatives have come back now and they are worth more now than they were. Mr. Lindsay said what he would recommend relative to

the derivatives, if this merger were to go through, on the day of the merger they get a market assessment of those derivative products. He said they would write them down to that value on that day, they would put them into a separate little box and keep them identified and any gains or losses associated with those derivatives subsequent to that period of time would be for the account of ETSU. Mr. Lindsay said he would recommend not having a wholesale sale the day of the merger because he doesn't think that would be fiscally appropriate. He said some of those products will come back and realize their losses--they will realize gains relative to their unrealized losses. He said it may take eight to ten years to do that, but if you are talking \$10 million worth of derivatives and we have a \$600 million portfolio, he would suggest that those be put in the corner an eye be kept on them. Mr. Lindsay said if there were a liquidity problem down the road, TAMUS literally could provide liquidity against those investments. He said they want to do some due diligence on that particular issue but he is confident that they can work that out.

Mr. O'Connor said some of the pending issues are the demographics and economics of the communities as well as there are some foundations that they may have that are private entities. Mr. Lindsay said they have two foundations. Texarkana has one which has approximately \$50,000 in it. It is new and relatively small. The second foundation at Commerce has about \$4 million of investments. Its moneys were invested by the same people that invested the university's funds, so it has some derivatives.

Ms. Rangel asked if their board of regents would dissolve. Dr. Thompson replied in the affirmative. Ms. Rangel asked what about their policies--have they discussed that at all. Mr. O'Connor said that was discussed and they have been made aware that the Board recently passed policies. He said they were interested in employment and how it relates to insurance and some of the logistics there as well as the tenure issue. Mr. O'Connor said they told them that is still pending because there is a strategic group looking at it. He said they are a teaching institution and don't want to prioritize over research. Mr. O'Connor said they told them that when someone comes on they would have an opportunity to go to one of those three tracks and then have a chance to switch. He said they left that fairly vague because TAMUS is not committed to that yet until the tenure policy is adopted. Mr. Lindsay said they understand that there is going to be a transition from their policies to TAMUS' policies. Dr. Thompson said one thing that is unique to this point with the proposed merger is the fact that never has a merger been discussed any more openly or publicly all over the area that they serve. He said over 75 percent of the population of the alumni, the students, the faculties, etc., support the merger. Mr. O'Connor said 89 to 90 percent were in favor of it but the name issue is different. Mr. O'Connor said he told them that the name can definitely be a stumbling factor and they need to decide their position on it. Mr. Lindsey said they have even sent questionnaires out to their alumni, given four different choices, and they have chosen "Texas A&M University-Commerce" and "East Texas A&M University" as their two top choices. Mr. Clayton said he has visited with almost every affected senator and house member concerned in the East Texas area and everyone of them have told him about town hall meetings and things that they have attempted in their districts and the response to the merger has been absolutely astonishing to them and they are all very supportive.

Mr. O'Connor said Commerce has a population of 8,000 and they contribute on an annual basis approximately \$50,000 a year to that institution in Commerce. Ms. Rangel asked what is their strongest reason for wanting to join TAMUS. Mr. Lindsey said he wished she could have heard them talk about it. He said they talked about it in an almost reverent manner. They thought that Texas A&M was absolutely the most important thing in education and they liked

everyone that they knew connected with A&M. He said they thought it was going to be very beneficial to them. Mr. O'Connor said that would include resources to solicit federal and state moneys. Dr. Thompson said one of the main issues is that ETSU probably has more black, middle class, college educated alumni in the Dallas area than anyone but A&M. He said they have a huge number in the Dallas black leadership who received graduate and undergraduate degrees from ETSU. He said they have a brand new center in Mesquite that has 38,000 square feet. Mr. O'Connor said the Mesquite facility is a long-term lease. Dr. Thompson said when he went to Mesquite, the president of the Dallas County Community College was there to say that he hoped the merger took place. Mr. Lindsay said the Commerce campus shows very well. It is a very pretty campus with 1,700 acres. Mr. O'Connor said they had also asked if there were any environmental issues.

Mr. O'Connor thanked Dr. Thompson, Mr. John Lindsey and Mr. Dick Lindsay and staff. He said he was proud of how quickly everybody got together and went there and did their due diligence. He said he wanted everybody to review these in its entirety before any decision is made. He said he would try to bring it back to the Board very quickly, knowing the time restraints with regards to potential legislation.

Ms. West said it was her understanding that Dr. Thompson and Mr. Lindsay wished to present part of this report in closed session. Mr. Lindsay said he did not need to do that.

Ms. Rangel asked how this would affect the appropriations for South Texas. Mr. O'Connor said ETSU, whether the merger takes place or not, is down in Austin working on its appropriations. He said they are not asking for anything more than what they have requested. Mr. Clayton said they have a strong advocacy in Austin. He said a merger will not affect, as far as competing dollars, South Texas. Ms. Rangel asked if they will be on equal standing with the South Texas universities. Mr. O'Connor said it just depends on who does a better job soliciting. Dr. Thompson said in his assessment, it strengthens all of our political situations or has the potential to do so. Ms. Rangel stated that they would not be competing. Dr. Thompson said he would work diligently to see that that does not happen. Mr. O'Connor said the whole objective is to coordinate the needs of all of the institutions within TAMUS. Ms. Rangel asked what was the rush. Mr. Clayton said the Board has until March 10, to introduce legislation to effect the merger. Mr. O'Connor said his committee will recommend very soon that the Board proceed with the language so that the deadline can be met with some contingencies. Ms. Rangel asked why the Board was getting the numbers at this late date. Mr. O'Connor said partially because ETSUC's board of regents had to come to some decision if they even wanted to entertain the idea and that decision was recent. Mr. Lindsey asked how much the A&M Board got to say about merging with the South Texas schools. He said the Legislature told the Board that it was going to do that. Mr. Lindsey said the Board has a chance of inviting ETSUC to join TAMUS or the Legislature will do it. Mr. O'Connor said this should be a positive situation. Ms. Rangel asked Mr. Lindsey's opinion if he thought there was any other university system that the Legislature would tell TAMUS to take in. Mr. Lindsey replied in the negative. Mr. Clayton said by the year 2010, there will be two systems in the State. Mr. Lindsey said TAMUS is lucky that ETSUC has chosen us. Ms. Rangel said she was glad that the due diligence was being done. Mr. Fernandez said if he saw all of the numbers, he would not know any more than he knew today.

Ms. West asked Dr. Thompson if he wished to give any part of the ETSU report in closed session. Dr. Thompson replied in the negative.

Mr. Clayton made a motion to proceed with a legislative bill that would propose a merger of East Texas State University into The Texas A&M University System. He said this would be contingent upon everything being squared away. He said the legislation must be introduced. He said if TAMUS wants to drop it later, it can. But if the legislation is not in, you can't do anything. Mr. Lindsey seconded the motion.

Mr. O'Connor said the Committee was asked to do its due diligence and asked that the Committee be allowed to finish its project and bring recommendations back to the Board. Mr. Clayton said he proposed that before the final decision, it would be brought back to the Board. He said all he wanted to do was to get the bill drafted and in the hopper and then it can be dropped if for any reason TAMUS does not want to proceed with it. Ms. Rangel said she thought it was inappropriate to get legislation going on a subject that the Board knows very little about. She said the Board has not been presented with any information. She said the Board has rushed into things before, and that has led to problems. She said she thought the "cart was being put before the horse."

Ms. West asked Mr. Clayton to restate his motion. Mr. Clayton said he moved that TAMUS proceed with the introduction of legislation proposing a merger of East Texas State University with The Texas A&M University System, contingent upon the final decision of the due diligence committee. Mr. O'Connor said he had no problem with that.

Dr. Thompson said he wanted this to be unanimous. He suggested that the Committee finish its due diligence and on Wednesday, vote by telephone. He said he would not ever recommend anything to the Board that he thought would get it into deep water. Mr. Clayton said he was worried about the filing deadline. Mr. Lindsey asked what more due diligence has to be done. Mr. O'Connor said the financial part is the most important factor: contracts, foundations, demographics, what information the Coordinating Board has and a report from the State Auditor. Mr. O'Connor said they would go through that item by item and have a brief summary for each regent. Ms. West asked Mr. O'Connor if he could have all of this information by next Wednesday. Mr. O'Connor replied in the affirmative. Mr. Fernandez asked if the Board would vote on Mr. Clayton's motion, to get the legislation together. Mr. O'Connor asked that the Committee be allowed to do its work. Mr. Lindsay asked what if the Board decide the appropriate language to approve the filing of legislation with the full understanding and knowledge that a formal report would be presented to the Board members and if there are any factors determined between now and that period of time, then a special Board meeting could be called to deal with those factors. Ms. West said Mr. Lindsay needed to write a motion to that end and the Board would vote on it.

At 10:45 a.m., Ms. West announced that having convened in open session, the Board would convene in closed session, as permitted by Section 551.071 of the Texas Government Code, for consultation with attorneys regarding contemplated litigation on the Cogeneration project. She said as permitted by Section 551.075, the Board would also receive a report from Chancellor Thompson and Mr. Dick Lindsay on the proposed merger with East Texas State University Complex, for the sole purpose of receiving information from them or to ask questions of them, and where no discussion of public business or System policy that affects public business would take place between Board members. Ms. West said in accordance with the law, no final action, decision, or vote with regard to any matter considered in the closed meeting would be made or taken. She said any such action, decision or vote would be taken in an open session. Ms. West asked all persons who had not been requested to stay for the closed session to leave the meeting room.

At 11:45 a.m., Ms. West reconvened the meeting of the Board in open session and said the Board met in closed session from 10:45 a.m. until 11:45 a.m., on March 3, 1995, and received a report from Chancellor Thompson and Mr. Dick Lindsay on the proposed merger with ETSUC. She said no action was taken on that report. Ms. West said the Board also consulted with System attorneys on pending and threatened litigation.

Ms. West said she would entertain a motion to adopt the following:

“The Board of Regents of The Texas A&M University System hereby authorizes the Chancellor of The Texas A&M University System to pursue non-binding alternative dispute resolution in the matter of the dispute regarding the development agreement between the Board of Regents of The Texas A&M University System on behalf of Texas A&M University and Tenneco Power and Generation Company. This authorization shall not be construed as a waiver of any “immunity from suit” arising to the benefit of the State of Texas, The Texas A&M University System and Texas A&M University. The procedure for this non-binding dispute resolution will be approved in advance by the Chancellor. The Chancellor is hereby authorized to do all things necessary to carry out such procedure.”

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50-95

**AUTHORIZATION FOR THE CHANCELLOR TO  
PURSUE NON-BINDING ALTERNATIVE DISPUTE  
RESOLUTION REGARDING THE DEVELOPMENT AGREEMENT  
BETWEEN THE BOARD OF REGENTS AND  
TENNECO POWER AND GENERATION COMPANY  
THE TEXAS A&M UNIVERSITY SYSTEM**

On motion of Mr. Clayton, seconded by Mr. Lindsey and by a unanimous vote, the following minute order was adopted:

*(Secretary's Note: Ms. West asked to be shown as voting “aye” on this item.)*

The Board of Regents of The Texas A&M University System hereby authorizes the Chancellor of The Texas A&M University System to pursue non-binding alternative dispute resolution in the matter of the dispute regarding the development agreement between the Board of Regents of The Texas A&M University System on behalf of Texas A&M University and Tenneco Power and Generation Company. This authorization shall not be construed as a waiver of any “immunity from suit” arising to the benefit of the State of Texas, The Texas A&M University System and Texas A&M University. The procedure for this non-binding dispute resolution will be approved in advance by the Chancellor. The Chancellor is hereby authorized to do all things necessary to carry out such procedure.

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Ms. West asked if there was any other business to come before the Board.

Mr. Clayton made a motion that the following item be adopted:

“The Board of Regents hereby authorizes the Chancellor to proceed with the filing of legislation to effect a merger of East Texas State University into The Texas A&M University System, unless the Chancellor advises the Board of Regents by Wednesday, March 8, 1995, of any reasons why the merger should not be sought.”

Mr. O’Connor said he would like to have more specific language with regard to the continuance of the Board’s committee on due diligence and the Chancellor. Mr. Clayton said what if they add “if the Committee reports adversely and the Chancellor advises the Board.”

Mr. Clayton read the amended motion as follows:

“The Board of Regents is hereby authorizes the Chancellor to proceed with the filing of legislation to effect the merger of East Texas State University into The Texas A&M University System, unless the due diligence committee of the Board advises the Chancellor and the Board of Regents by Wednesday, March 9, 1995, the reasons why the merger should not be sought.”

Ms. Rangel said she would like to say one last time, that as a board they were authorizing the staff to proceed with filing legislation without ever having seen one document on this whole subject. Dr. Thompson said he thought that they had sent material to the regents. Ms. Rangel said that information was prepared by ETSU. Dr. Thompson said Mr. O’Connor’s committee is putting together the System’s information on that. Ms. Rangel said she hopes at that time that she is at that point of comfort but right now, she could not vote on something for which she has seen no documentation. Ms. West said the bill would not be filed if the findings of the Committee were adverse. Ms. West asked Mr. Clayton to read the motion again.

Mr. Lindsay asked why they were putting in the March 8, date. Dr. Thompson suggested the following minute order:

“The Board of Regents hereby authorizes the Chancellor to proceed with the filing of legislation to effect a merger of the East Texas State University Complex into The Texas A&M University System, unless the due diligence committee of the Board advises the Chancellor and the Board of Regents by Wednesday, March 8, 1995, the reasons why the merger should not be sought.”

Mr. O’Connor said all the information would be immediately forwarded to the members of the Board. The Board took action as set forth below:

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51-95

**AUTHORIZATION FOR THE CHANCELLOR TO  
PROCEED WITH THE FILING OF LEGISLATION TO EFFECT A  
MERGER OF THE EAST TEXAS STATE UNIVERSITY COMPLEX  
INTO THE TEXAS A&M UNIVERSITY SYSTEM**

On motion of Mr. Clayton, seconded by Mr. O'Connor, with Ms. Rangel voting "nay," and by a majority vote, the following minute order was adopted:

*(Secretary's Note: Ms. West asked to be shown as voting "aye" on this item.)*

The Board of Regents hereby authorizes the Chancellor to proceed with the filing of legislation to effect a merger of the East Texas State University Complex into The Texas A&M University System, unless the due diligence committee of the Board advises the Chancellor and the Board of Regents by Wednesday, March 8, 1995, the reasons why the merger should not be sought.



There being no further business, Ms. West adjourned the special meeting of the Board at 11:55 a.m., the same day.

Vickie Running  
Secretary of the Board of Regents  
The Texas A&M University System

vr

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