

LPDR



UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

_____ )		
In the Matter of )		
HOUSTON LIGHTING AND POWER )		
CO., et al. (South Texas )	Docket Nos. 50-498A	
Project, Units 1 and 2) )	50-499A	
TEXAS UTILITIES GENERATING )		
COMPANY (Comanche Peak Steam )	Docket Nos. 50-445A	
Electric Station, Units 1 )	<u>50-446C</u>	
and 2) )		
_____ )		

MOTION OF THE DEPARTMENT OF JUSTICE TO COMPEL PRODUCTION  
BY HOUSTON LIGHTING & POWER COMPANY OF CERTAIN DOCUMENTS WHICH  
IT CONTENDS ARE PRIVILEGED

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.740(f) of the NRC Rules, the Department of Justice ("Department") respectfully moves the Board for an Order compelling Houston Lighting & Power Company ("HLP") to produce certain documents being withheld under a claim of privilege.

II. BACKGROUND

On November 22, 1978, more than seven months ago, the Department served a first set of interrogatories and request for production of documents ("Interrogatories") on counsel for HLP. On January 11, 1979, HLP served its answers and

623009

7908180215<sup>A</sup>

objections. On January 15, 1979, HLP filed a motion for a protective order regarding certain of the Department's Interrogatories. On February 6, 1979, the Department filed an opposition to that motion and a response to HLP's objections. At the same time, the Department filed a motion to compel HLP to provide fuller responses.

On March 6, 1979, after a reply by HLP, this Board issued an Order denying HLP's motion for a protective order. On March 12, 1979, the Board issued a second Order which granted the Department's motion to compel in virtually every respect. The aforementioned Orders dealt, among other things, with the first instruction in the Department's Interrogatories 1/ and with the Department's request that all documents withheld because of a claim of privilege be listed together with a statement of the basis for the asserted privilege. (March 6, 1979 Order at 3).

Almost four months have passed since the issuance of those Orders. During that time, the Department has sought to avoid bringing these same matters back before the Board. Thus, following the Board's March 6 and March 12, 1979 Orders, during March 20, 1979 Prehearing Conference, and in several subsequent phone calls with HLP's attorneys,

---

1/ This instruction provided that if some of the requested documents had already been made available for the Department's inspection, they could be listed and described in lieu of being produced again, see March 6, 1979 Order at 1.

627010

1979 Orders, during the March 20, 1979 Prehearing Conference, and in several subsequent phone calls with HLP's attorneys, the Department repeatedly offered to participate in a meeting of counsel in an attempt to narrow the scope of its Interrogatories. Counsel for HLP eventually agreed to attend such a meeting, which was held on April 18, 1979. It was the Department's understanding at the conclusion of that meeting that HLP 2/ would update certain interrogatory answers, provide a current list of purportedly privileged documents and produce an index of previously supplied documents categorized by interrogatory.

On May 31, 1979, approximately six weeks after the meeting of counsel and almost three months after the Board's Order denying HLP's motion for a protective order, HLP

---

2/ Attorneys for Texas Utilities Company were also present at that meeting and agreed to provide certain information. Their compliance is not at issue in this motion.

finally produced some supplementary interrogatory answers, an index 3/ and an updated privilege list.

The updated privilege list which HLP eventually produced see Exhibit A hereto, contains many documents which, on their face, do not appear to be sheltered from production either by prior Board Orders or by any established legal privilege. After carefully studying the list, the Department contacted one of HLP's attorneys and worked with him, by telephone, for several hours during the week of June 25 through 29, 1979.

---

3/ The so-called index contained nothing more than a meaningless list of eleven digit numbers which had apparently been assigned to documents during discovery in the civil case. Those numbers, although categorized by interrogatory, were totally unintelligible to the Department. The Department informed HLP's counsel in subsequent telephone conversations that such an index, without further identification of documents, was useless. Finally, in a phone conversation on or about June 6, 1979, counsel for HLP took the position that, rather than identify the documents, HLP would exercise the original option given to it of simply sending second copies of responsive documents already produced. See the first "General Instruction" contained in the Department's Interrogatories, Section E.1 at 7. This decision was made despite the preference for an index expressed by Chairman Miller at the March 20, 1979 Prehearing Conference (Tr. at 177).

In recent phone conversations with counsel for HLP (during the week of June 25-29), the Department has agreed to attempt to meet its needs with such a production on the condition that the copies be sent immediately and that each document be carefully categorized according to the interrogatory to which it relates. However, the Department feels that the Board should be aware that, despite HLP's protestations (see, e.g., March 20, 1979 Prehearing Conference, Tr. at 161 et seq.) to the effect that the Department was forcing HLP to index 100,000 documents, HLP has now chosen to exercise an option which HLP decided to forego seven months ago. In light of this history, the Department wishes to expressly reserve its right to resubmit this matter for the Board's consideration in the event that HLP's production is again inadequate.

On this occasion, the Department and HLP were able to narrow substantially the areas of dispute between them. 4/ However, despite the best efforts of counsel, several contested issues remain. It is these remaining issues which form the substance of this Motion.

### III. ARGUMENT

#### A. Corporate Employees or Officers (Parties) Do Not Have the Same Work Product Privilege as Attorneys.

The first area of dispute between the Department and HLP concerns a category of documents written: (1) between or among HLP officers and employees and relating to an outside nontestifying consultant, or (2) from an outside nontestifying consultant to an officer or employee of HLP or vice versa. The contested documents falling within this category are listed in Appendix B hereto. 5/ HLP has justified its refusal to produce these

---

4/ As a result of these telephone conversations, HLP has agreed to produce immediately sixteen documents appearing on its privilege list, to wit documents numbered 202, 206, 210, 213, 220, 222, 224 (attachments), 225, 232, 246, 247, 248, 249, 263, 264, and 277.

5/ The Department has not included in its Appendix any documents which appear on their face to be procedural or administrative rather than substantive (e.g., status reports dealing with the progress that was being made on the Stagg study).

documents on a combination of the work product privilege and a privilege purportedly adhering to communications involving a non-testifying expert.

The immunity from discovery accorded to "work product" stems from Hickman v. Taylor, 329 U.S. 495 (1947) in which "written statements, private memoranda, and personal recollections" prepared by an adverse party's counsel in the course of his legal duties were held to be "outside the arena of discovery." Id. at 510. This limited "work product" exception to the broad scope of discovery has been codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure and in 2.740(b)(2) of the NRC Rules. <sup>6/</sup> The NRC rule makes it clear that the privilege applies to material prepared "by or for [a] party's representative" (e.g., its attorney) but makes no mention of documents, memoranda, etc. written by (or for) a party itself.

---

<sup>6/</sup> The NRC rule reads, in relevant part:

(2) Trial preparation materials. A party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (1) of this paragraph and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. (Emphasis added)

The cases demonstrate that "work product" focuses on material and information prepared by an attorney, or an agent of the attorney, under that attorney's direct and explicit supervision. In general, the doctrine is designed to protect "memoranda, recorded mental impressions, synopses of witness statements, drafts of documents" which are prepared by an attorney in anticipation of litigation. Hercules Corporation v. Exxon Corporation, 434 F. Supp. 136, 150 (D. Del. 1977). The privilege is afforded material which involves the application of the attorney's professional skill and experience. Philadelphia Housing Authority v. American Radiator & S. San Corp., 291 F. Supp. 247-50 (D. Pa. 1968). Moreover, many cases specifically distinguish an attorney's own work product (or the work product of his agents) from work done by agents or employees owing primary allegiance to employers other than the attorney. See, e.g., Virginia Electric & Power Co. v. Sun Shipbuilding and Dry Dock Co., 68 F.R.D. 397 (E.D. Va. 1975) and cases cited therein.

Nor is HLP's argument bolstered by the fact that the documents being withheld relate in some fashion to a non-testifying expert. The Board has in the past ruled that an attorney's communications with non-testifying experts are privileged from discovery by virtue of the work product doctrine (Prehearing Conference of March 20, 1979,



Tr. at 183-85). 7/ As Chairman Miller explained during the March 20, 1979 Prehearing Conference:

[W]e think that this question of experts you may have talked to that you don't intend to call, that to us seems to be within the purview of a lawyer's right to have his own thoughts and everything else. (Tr. 185, emphasis added).

Thus, the nontestifying expert exception which the Board has carved out is a subcategory of the work product privilege and, for all the reasons just discussed in connection with the work product doctrine, is not properly invoked in the circumstances here.

For all the foregoing reasons, documents #197, 211, 234, 240, 243, 258, 260, 265, 272, 273 and 278 (listed in Appendix B) should be produced forthwith.

---

7/ During the March 20, 1979 hearing, the Board held the NRC Staff's communications with non-testifying experts to be privileged from discovery. HLP later contended that certain of the Staff's requests to it were identical to the requests denied at the March 20, 1979 Prehearing Conference. See Houston Lighting & Power Company's Response to the NRC Staff's Response to Motion for Protective Order and Motion to Compel Further Answers to Staff's Interrogatories and Requests for Production of Documents, dated April 11, 1979, at 4. The Board sustained HLP's objection to responding to those requests. See April 16, 1979 Order at 1-2.



B. Documents Written To or From a Testifying Expert and Relevant to Matters About Which that Expert is Likely to Testify Should be Produced

The second area of dispute remaining between HLP and the Department relates to documents written either from or to a testifying expert. While the parties have informally resolved the issue as it pertains to many such documents, the question still remains open as to other documents falling in this category. Those documents are listed in Appendix C hereto.<sup>8/</sup>

Much of the dispute regarding these documents revolves around the fact that the expert in question (Eugene Simmons) is both a named testifying expert and a corporate officer of HLP. <sup>9/</sup> To determine the validity of the privileges relied upon by HLP (attorney-client, work product/non-testifying

---

<sup>8/</sup> Documents numbered 195, 198, 207, 208, 236, 238, 242, 243, 244, 260, 266, 268 and 275.

<sup>9/</sup> It should be pointed out, however, that three of the documents appearing on Appendix C, documents numbered 238, 242 and 260, went to Abe Gerber, as well as to Eugene Simmons. Abe Gerber has been named as a testifying expert and is not an employee of HLP. At least insofar as the three documents given to Mr. Gerber are concerned, the Department sees no reason why those documents, each of which is relevant to these proceedings and undoubtedly to Mr. Gerber's testimony, should not be produced forthwith.

expert), it is necessary to ascertain in what capacity Mr. Simmons was acting when he wrote or received the documents in question.

This issue has arisen previously in connection with documents the Staff sought pursuant to its discovery request of HLP. The Board, in ruling on the Staff's motion for reconsideration of a Board Order denying access to certain HLP documents, stated:

The Board has ruled that the use by counsel of consultants not to be called as witnesses is protected as part of an attorney's trial preparation which is not subject to discovery. However, a different rule obtains as to the studies or analyses of others which a witness has used or will use in the preparation of his testimony or studied for cross-examination or other testimonial purposes. Such studies or documents should be produced, and HL&F has agreed to do so, subject to one exception. That exception relates to documents a corporate officer has reviewed in his capacity as an officer of a company involved in litigation, but which he does not intend to rely upon in his testimony. This exception is valid and will be sustained. (May 7, 1979 Order at 1-2, emphasis added, footnotes omitted).

622018

Thus, the issues to be resolved are whether particular documents were written or reviewed by Mr. Simmons in his capacity as a corporate officer or in his capacity as a testifying expert and, if in his latter capacity, whether Mr. Simmons relied or intends to rely upon those documents in preparing his expert testimony. It is difficult to resolve these issues because a document first read or written by an individual in one capacity and for one purpose cannot totally be put out of that individual's mind when he or she subsequently acts in another capacity or for another purpose. Accordingly, the Department should not be prevented from discovering all the information relied upon by an opposing party's expert in preparation of his or her testimony or in anticipation of trial simply because that opposing party has chosen to name as its expert one of its officers or employees. Otherwise, counsel could designate all officers as "experts" in order to circumvent the discovery rules.

In the instant motion the Department is simply moving to compel the production of those documents which, based on their description (contained in the HLP Privilege List) appear directly relevant to the issues in these proceedings. For example, document #198, is described as a 4/15/77 Memorandum from Hunsicker (an attorney for HLP) to Copeland, Cowan, Thrash (all

attorneys for HLP) and Simmons (testifying expert), regarding Abe Braitman's (outside consultant) comments on the FPC Staff Report of ERCOT-SWPP Interconnection and Reliability Evaluation on. 10/ In addition to the obvious relevance of the subject matter of this document, the cited report was prepared in large measure by William Scott, the individual whom the Department has named as its testifying expert in these proceedings. It is difficult to believe that Mr. Simmons will not rely upon or study (or has not relied upon or studied) Mr. Braitman's comments in connection with his testimony, preparation for cross-examination or the like. 11/

---

10/ The Board has already ruled that an attorney's communications with a testifying expert should generally be produced:

This is ordered because (a) if an attorney communicates with an expert, who is going to be an expert witness, such a communication could have a bearing on the witness's credibility... (June 25, 1979 Order, ¶ 3 at 3).

11/ The Department understands the difficulty involved in deciding whether a particular document was, or will be, "relied upon" by an expert in connection with his or her testimony. The Department believes it is highly unlikely that, in its May 7, 1979 Order, the Board intended that a testifying expert base his or her testimony directly on a particular document before that document be subject to discovery, but rather that it be one of the background sources which helped the expert formulate his or her opinions. If the Board feels that it cannot fairly rule (based on the sparse information provided in the privilege list) on whether the documents the Department is seeking are of a type likely to be (or to have been) relied on by Mr. Simmons in connection with his testimony, the Department respectfully suggests that the Board ask that the documents involving testifying experts be produced for in camera inspection, with a ruling on the Department's motion to follow.

For all the foregoing reasons, the Department respectfully requests that it be given copies of documents numbered 195, 198, 207, 208, 236, 238, 242, 243, 244, 260, 266, 268 and 275, all of which appear on HLP's Privilege List.

#### IV. CONCLUSION

For the reasons discussed in previous sections of this Motion, the Department respectfully requests that the Board compel HLP to produce, within one week of the date of entry of its Order, documents numbered 197, 211, 234, 240, 243, 258, 260, 265, 272, 273 and 278 (listed in Appendix B and involving communications between corporate officers or between a corporate officer and a nontestifying expert) and 195, 198, 207, 208, 236, 238, 242, 243, 244, 260, 266, 268 and 275 (listed in Appendix C and either to or from a testifying expert).

Respectfully submitted,

Judith L. Harris  
Judith L. Harris  
Susan B. Cyphert  
Ronald H. Clark  
Frederick H. Parmenter

Attorneys, U.S. Dept. of  
Justice  
Antitrust Division  
Washington, D.C. 20530

July 11, 1979

623021

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of )		
HOUSTON LIGHTING AND POWER )	)	Docket Nos. 50-498A
CO., et al. (South Texas )	)	50-499A
Project, Units 1 and 2) )	)	
TEXAS UTILITIES GENERATING )	)	Docket Nos. 50-445A
COMPANY (Comanche Peak Steam )	)	50-446A
Electric Station, Units 1 )	)	
and 2) )	)	

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing MOTION OF THE DOJ TO COMPEL PRODUCTION BY HL&P OF CERTAIN DOCUMENTS WHICH IT CONTENDS ARE PRIVILEGED has been made on the following parties listed hereto this 11th day of July, 1979, by depositing copies thereof in the United States mail, first class, postage prepaid.

Marshall E. Miller, Esquire  
Chairman  
Atomic Safety & Licensing Board  
Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Michael L. Glaser, Esquire  
1150 17th Street, N.W.  
Washington, D. C. 20036

Sheldon J. Wolfe, Esquire  
Atomic Safety & Licensing Board  
Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Samuel J. Chilk, Secretary  
Office of the Secretary of the  
Commission  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Atomic Safety and Licensing  
Appeal Board Panel  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Richard S. Salzman, Esquire  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Jerome E. Sharfman, Esquire  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Chase R. Stephens, Secretary  
Docketing and Service Branch  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Jerome Saltzman  
Chief, Antitrust and  
Indemnity Group  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Roff Hardy  
Chairman and Chief Executive  
Officer  
Central Power and Light  
Company  
P. O. Box 2121  
Corpus Christi, Texas 78403

G. K. Spruce, General Manager  
City Public Service Board  
P.O. Box 1771  
San Antonio, Texas 78203

Perry G. Brittain  
President  
Texas Utilities Generating  
Company  
2001 Bryan Tower  
Dallas, Texas 75201

R.L. Hancock, Director  
City of Austin Electric  
Utility Department  
P. O. Box 1088  
Austin, Texas 78767

G. W. Oprea, Jr.  
Executive Vice President  
Houston Lighting & Power  
Company  
P. O. Box 1700  
Houston, Texas 77001

Jon C. Wood, Esquire  
W. Roger Wilson, Esquire  
Matthews, Nowlin, Macfarlane  
& Barrett  
1500 Alamo National Building  
San Antonio, Texas 78205

Joseph Gallo, Esquire  
Richard D. Cudahy, Esquire  
Robert H. Loeffler, Esquire  
Isham, Lincoln & Beale  
Suite 701  
1050 17th Street, N.W.  
Washington, D. C. 20036

Michael I. Miller, Esquire  
Richard E. Powell, Esquire  
David M. Stahl, Esquire  
Thomas G. Ryan, Esquire  
Martha E. Gibbs, Esquire  
Isham, Lincoln & Beale  
One First National Plaza  
Chicago, Illinois 60603

Roy P. Lessy, Esquire  
Michael Blume, Esquire  
U.S. Nuclear Regulatory  
Commission  
Washington, D. C. 20555

Jerry L. Harris, Esquire  
City Attorney,  
Richard C. Balough, Esquire  
Assistant City Attorney  
City of Austin  
P.O. Box 1088  
Austin, Texas 78767

Robert C. McDiarmid, Esquire  
Robert A. Jablon, Esquire  
Spiegel and McDiarmid  
2600 Virginia Avenue, N.W.  
Washington, D. C. 20036

Dan H. Davidson  
City Manager  
City of Austin  
P. O. Box 1088  
Austin, Texas 78767

Don R. Butler, Esquire  
1225 Southwest Tower  
Austin, Texas 78701

Joseph Irion Worsham, Esquire  
Merlyn D. Hampels, Esquire  
Spencer C. Relyea, Esquire  
Worsham, Forsythe & Sampels  
2001 Bryan Tower, Suite 2500  
Dallas, Texas 75201

Joseph Knotts, Esquire  
Nicholas S. Reynolds, Esquire  
Debevoise & Liberman  
1200 17 Street, N.W.  
Washington, D. C. 20036



Douglas F. John, Esquire  
Akin, Gump, Hauer & Feld  
1333 New Hampshire Avenue, N.W.  
Suite 400  
Washington, D. C. 20036

Morgan Hunter, Esquire  
McGinnis, Lochridge & Kilgore  
5th Floor, Texas State Bank  
Building  
900 Congress Avenue  
Austin, Texas 78701

Jay M. Galt, Esquire  
Looney, Nichols, Johnson  
& Hayes  
219 Couch Drive  
Oklahoma City, Oklahoma 73101

Knoland J. Plucknett  
Executive Director  
Committee on Power for the  
Southwest, Inc.  
5541 East Skelly Drive  
Tulsa, Oklahoma 74135

John W. Davidson, Esquire  
Sawtelle, Goode, Davidson  
& Tioilo  
1100 San Antonio Savings  
Building  
San Antonio, Texas 78205

W. S. Robson  
General Manager  
South Texas Electric  
Cooperative, Inc.  
Route 6, Building 102  
Victoria Regional Airport  
Victoria, Texas 77901

Robert M. Rader, Esquire  
Conner, Moore & Corber  
1747 Pennsylvania Ave., N.W.  
Washington, D.C. 20006

W.N. Woolsey, Esquire  
Dyer and Redford  
1030 Petroleum Tower  
Corpus Christi, Texas 78474

R. Gordon Gooch, Esquire  
John P. Mathis, Esquire  
Baker & Botts  
1701 Pennsylvania Avenue, N.W.  
Washington, D. C. 20006

Robert Lowenstein, Esquire  
J. A. Bouknight, Esquire  
William J. Franklin, Esquire  
Lowenstein, Newman, Reis,  
Axelrad & Toll  
1025 Connecticut Avenue, N.W.  
Washington, D. C. 20036

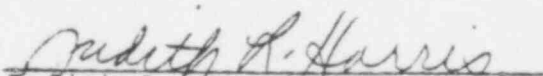
E. W. Barnett, Esquire  
Charles G. Thrash, Jr., Esquire  
J. Gregory Copeland, Esquire  
Theodore F. Weiss, Jr., Esquire  
Baker & Botts  
3000 One Shell Plaza  
Houston, Texas 77002

Kevin B. Pratt, Esquire  
Assistant Attorney General  
P.O. Box 12548  
Capital Station  
Austin, Texas 78711

Frederick H. Ritts, Esquire  
Law Offices of Northcutt Ely  
Watergate 600 Building  
Washington, D.C. 20037

Donald M. Clements, Esq.  
Gulf States Utilities Company  
P.O. Box 2951  
Beaumont, Texas 77704

Donald M. Clements, Esq.  
Gulf States Utilities Company  
P.O. Box 2951  
Beaumont, Texas 77704

  
Judith L. Harris Attorney  
Energy Section  
Antitrust Division  
Department of Justice

APPENDIX A

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
183	5/10/73	Letter	Schwarz (B&B) to K.L. Williams (HL&P)	Redraft of STP Participation Agreement	Attorney-client
184	1/21/76	Memorandum	Thrash	CSW/FPC	Attorney-client
185	2/24/76	Memorandum	Thrash to Reese, Jordan Oprea, Dean, Standish, Simmons & Brown	Meeting of Simmons, Teague & Thrash with officers and representatives of Florida Power & Light Company	Attorney-client
186	Deleted				
187	9/27/76	Letter	Braitman to Copeland	Draft affidavit and summary of professional experience	Work product; non-testifying expert
188	1/31/77	Memorandum	Copeland to Reese and Jordan	Current status of various CSW proceedings	Attorney-client
189	Deleted				
190	Deleted				
191	2/14/77	Letter	Stagg to McCuiston	Progress Report of study activities from Jan. 1, 1977 to Jan. 31, 1977	Work product; non-testifying expert

623025

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
192	2/14/77	Letter (draft)	Thrash to Woolsey	Texas Public Utility Commission, Docket No. 14	Attorney-client
192-A	2/14/77	Same as Document No. 192			
193	2/25/77	Memorandum	Thrash to Cowan	CSW (TPUC) "Hearing" of Feb. 23, 1977	Work Product
194	Deleted				
195	3/21/77	Memorandum	Copeland to Simmons	Committee on Power for the Southwest	Attorney-client
196	Deleted				
197	4/1/77	Memorandum	Meyer to Kayser (HL&P)	Notes of Meetings with Glenn Stagg	Work product; non-testifying expert
198	4/15/77	Memorandum	Hunsicker to Copeland, Cowan and Thrash	Abe Braitman comments on FPC Staff report of ERCOT-SWPP connection and Reliability Evaluation	Work product; non-testifying expert
199	4/18/77	Memorandum (outline No. 1)	Thrash to Copeland	Testimony for PUC hearing of May 2, 1977	Work product

625020

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
200	4/18/77	Memorandum (outline No. 2)	Thrash to Copeland	Testimony for PUC hearing of May 2, 1977	Work product
201	4/18/77	Memorandum (outline No. 3)	Thrash to Copeland	Testimony for PUC hearing of May 2, 1977	Work product
202	4/18/77	Memorandum (first draft)	Thrash to Simmons	Testimony for PUC hearing of May 2, 1977	Attorney-client; Work product
203	4/18/77	Same as Document No. 202			
204	4/18/77	Memorandum (outline No. 5)	Thrash to Simmons	Testimony for PUC hearing of May 2, 1977	Attorney-client; Work product
205	4/18/77	Memorandum (outline No. 6)	Thrash to Simmons	PUC hearing of May 2, 1977	Attorney-client; Work product
206	4/18/77	Memorandum	Thrash to Simmons and Copeland	Outlines of proposed testimony for PUC hearing	Attorney-client; Work product
207	4/27/77	Memorandum	Copeland to Thrash	Revision of PUC testimony Outline No. 4	Work product
208	4/27/77	Memorandum	Copeland to Thrash	Revision of PUC testimony Outline No. 5	Work product
209	Deleted				

623027

-21-

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
210	5/5/77	Draft testimony		Simmons PUC testimony	Work product
211	6/1/77	Notes	Meyer to Williams	HL&P input to Stagg studies	Work product; non-testifying expert
212		Notes	Samples to Copeland	TU response to Stagg studies	Work product
212-A		Same as Document No. 212			
213	6/17/77	Memorandum	Copeland to Jack Newton	Preparation of materials for Federal District Court trial	Attorney-client; Work product
214	7/18/77	Notes		Listing of Stagg studies	Work product; non-testifying expert
215	Deleted				
216	Deleted				
217	Deleted				
218	Deleted				
219	Deleted				

823028

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
220	9/9/77	Memorandum	McCuiston of Simmons	Engineering Department comments in preparation for SEC hearings	Work product
221	9/12/77	Letter	Stagg to McCuiston	Progress report of Stagg Study activities from Aug. 1, 1977 to Aug. 31, 1977	Work product; non-testifying expert
222	9/18/77	Notes	Simmons	Settlement with CSW	Settlement discussion
223	10/12/77	Letter	Stagg to McCuiston	Progress report of study activities from Sept. 1, 1977 to Sept. 30, 1977	Work product; non-testifying expert
224	10/18/77	Memorandum	Copeland to Barnett, Gooch, Hunsicker and Thrash	Response to inquiry from firm representing NERC 23/	Work product
225	10/19/77	Memorandum	Simmons to Copeland	GSU letter to Texas PUC	Attorney-client
226	10/21/77	Memorandum	Copeland to Barnett, Gooch, Hunsicker and Thrash	Inquiries from firm representing NERC	Work product
227	11/3/77	Notes	FJM to Simmons	Status of Stagg final report	Work product; non-testifying expert
228	11/09/77	Letter	Hunsicker to Stagg	HL&P rebuttal Case at SEC	Work product; non-testifying expert

623029

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
229	11/16/77	Letter	Stagg to Simmons	Status of Stagg report	Work product; non-testifying expert
230	11/17/77	Draft	Motion	Before the Public Utility Commission of Texas re: Docket No. 14	Work product
230-A	11/17/77	Same as Document No. 230			
231		Report	Braitman	Analysis of CSW studies	Work product; non-testifying expert
232		Notes	Simmons	Discussion with Attorneys re: NERC & FPC investigations	Attorney-client
233	Deleted				
234		Notes	Simmons	Review of draft Stagg study	Work product; non-testifying expert
235	12/5/77	Memorandum	Copeland to Gooch	Distribution list for Stagg Report	Work product
236	12/5/77	Memorandum	Thrash to Reese, Jordan, Oprea, Dean & Simmons	CSW-General	Attorney-client

623030



<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
236-A	12/5/77	Same as Document No. 236			
236-B	12/5/77	Same as Document No. 236			
237	Deleted				
238	12/13/77	Draft	Stagg	Stagg study	Work product; non-testifying expert
239	12/15/77	Memorandum	Copeland to Simmons	Mailing list for Stagg study	Attorney-client
240	12/23/77	Draft Letter	Braitman to Simmons	Distribution of Stagg study	Work product; non-testifying expert
241	1/09/78	Letter	Glenn Stagg of Stagg Systems to McCuistion (HL&P)	Progress report 12/1/77-12/31/77	work product; non-testifying expert
242	1/19/78	Draft	Stagg to Oprea, Simmons, McCuistion, Williams (HL&P), Thrash, Copeland, Barnett, Gooch (B&B), Braitman & Gerber	Draft of Stagg study	Work product; non-testifying expert
243	1/20/78	Letter	Braitman to Simmons (HL&P)	Involvement of SWPP & NERC in CSW-ERCOT controversy	Work product; non-testifying expert

623031

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
243-A	1/20/78	Same as 243			
244	1/24/78	Letter	Copeland to Simmons	Draft of letter concerning NERC-TAC review of ERCOT/SWPP interconnection	Attorney-client
245	3/15/78	Letter	Stagg to McCuiston	Progress Report 1/1/78-2/28/78 of Staff Study	Work product; non-testifying expert
246	3/23/78	Memorandum	Meyer (HL&P) to File	Review of CSW Studies in preparation for SEC case.	Work product
247	4/7/78	Memorandum	Doan (HL&P) to Simmons	Answers to CSW Interrogatories	Work product
248	4/17/78	Memorandum	Simmons to Copeland	Answers to CSW Interrogatories	Attorney-client; Work product
249	4/18/78	Memorandum	Meyer to Simmons	Answers to CSW Interrogatories	Work product
250	4/26/78	Letter	Simmons to Stagg	Status of Stagg studies	Work product; non-testifying expert
251	4/26/78	Letter	Stagg to Simmons	Status of studies related to CSW	Work product; non-testifying expert

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
252	5/01/78	Letter	Stagg to McCuiston	Progress Report 3/1/78 to 4/30/78	Work product; non- testifying expert
252-A	5/01/78	Same as 252			
252-B	5/01/78	Same as 252			
253		Notes		List of Stagg studies	Work product; non- testifying expert
254		Same as 253		Load flow, tran- sient, produc- tion & invest- ment cost studies	Work product
255	5/04/78	Notes	Simmons to Barnett	Stagg Studies Progress Reports	Attorney-client, Work product
256	5/08/78	Letter	Hunsicker (B&B) to Stagg	Status of Stagg Studies	Work product; non- testifying expert
257	5/08/78	Letter	Hunsicker to Stagg	Status of Stagg Studies	Work product; non- testifying expert
258	5/09/78	Letter	Williams (HL&P) to Stagg	HL&P input to Stagg studies	Work product; non- testifying expert
259	5/18/78	Pleading Draft	Braitman & Gooch	CSWS Motion to Exclude	Work product; non- testifying expert

627033

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
260	5/25/78	Draft	Stagg to Oprea, Simmons, McCuistion, Williams, Thrash, Copeland, Barnett, Gooch, Hunsicker, Braitman, & Gerber	Preliminary draft of Stagg Systems Report	Work product; non-testifying expert
261	6/07/78	Memorandum	Thrash to Copeland	Small Systems Brochure	Work Product
262	6/22/78	Note		List of Stagg Studies	Work product; non-testifying expert
263	6/28/78	Letter	Thrash to Simmons, Sykora, Doan & Webb	NERA information request	Attorney-client; Work product
264	7/07/78	Memorandum	Simmons to Thrash	NERA information request	Attorney-client; Work product
265	7/10/78	Letter	McCuistion to Stagg	HL&P assistance on Stagg Study	Work product; non-testifying expert
266	7/11/78	Memorandum	Hunsicker to Braitman, Copeland, Simmons, Stagg, Thrash	FERC staff report	Attorney-client
267	7/18/78	Draft	Stagg	Stagg Report	Work product; non-testifying expert
268	7/19/78	Memorandum Draft	Thrash to Simmons	ERCOT Report	Attorney-client
269	Delete				

623034

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identity of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
270	7/31/78	Letter	Stagg to McCuiston	Status of Stagg Studies	Work product; non-testifying expert
271	7/31/78	Memorandum	Stagg	Status of Stagg Studies	Work product; non-testifying expert
272	8/09/78	Draft	Stagg to Williams	Stagg Report	Work product; non-testifying expert
273	8/09/78	Draft	Stagg to Williams	Stagg Report	Work product; non-testifying expert
274	Deleted				
275	8/11/78	Letter	Braitman to Simmons	Preparation for SEC hearings	Work product; non-testifying expert
276	Deleted				
277	8/17/78	Memorandum	Simmons to Gooch, Hunsicker, Barnett, Thrash, Copeland, Braitman, Stagg & Williams	Meeting re: CSW controversy	Attorney-client
278	8/17/78	Note	Williams to Braitman	Preparation for SEC hearings	Work product; non-testifying expert
279	Deleted				
280	Deleted				
281		Draft	Braitman	Testimony before the PUC	Work product; non-testifying expert

622035

1201

22/ Documents attached to Document 184 include:

- 1) Map dated 1/27/76
- 2) Excerpts from Public Utility Holding Co. Act dated 1/27/76
- 3) Excerpt of Members of Firm of Isham, Lincoln & Beale
- 4) Changes from 1936-1976 dated 1/27/76
- 5) Memorandum from Thrash to file, 1/26/76, re: FPC and Rate Regulation
- 6) Consolidated Balance Sheet from Dec. 31 of 1973 and 1974
- 7) CSW/FPC alternatives, 1/27/76

23/

- 1) Memorandum from Simmons to file, October 13, 1977 re: C&CSW-NERC
- 2) National Electric Reliability Council Certificate of Incorporation August 21, 1974 and By-Laws Revised April 21, 1976

623036

## APPENDIX B

WORK PRODUCT PRIVILEGE - HLP OFFICERS AND EMPLOYEES

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
197	4/1/77	Memorandum	Meyer (HLP) to Kayser (HLP)	Notes of meetings w/ Glenn Stagg	Work product; nontestifying expert
211	6/1/77	Notes	Meyer (HLP) to Williams (HLP)	HLP input to Stagg studies	Work product; nontestifying expert
234		Notes	Simmons (HLP)	Review of draft Stagg Study	Work product; nontestifying expert
240	12/23/77	Draft letter	Braitman (outside consultant) to Simmons (HLP)	Distribution of Stagg Study	Work product; nontestifying expert

607037



6-30-8

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Bas_s for Claimed Privilege</u>
243	1/20/78	Letter	Braitman (outside consultant) to Simmons (HLP)	Involvement of SWPP & NERC in CSW-ERCOT controversy	Work product; nontestifying expert
258	5/9/78	Letter	Williams (HLP) to Stagg	HLP input to Stagg studies	Work product; nontestifying expert
260	5/25/78	Draft	Stagg (outside consultant) to Oprea (HLP), Simmons (HLP-testifying expert), McCuistion (HLP), Williams (HLP), Thrash, Copeland, Barnett, Gooch, Hunsicker (attorneys for HLP), Braitman (outside consultant), Gerber (testifying expert)	Preliminary draft of Stagg systems report	Work product; nontestifying expert

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
265	7/10/78	Letter	McCuistion (HLP) to Stagg (outside consultant)	HLP assistance on Stagg study	Work product; nontestifying expert
272	8/9/78	Draft	Stagg to Williams	Stagg Report	Work product; nontestifying expert
273	8/9/78	Draft	Stagg to Williams	Stagg Report	Work product; nontestifying expert
278	8/17/78	Note	Williams (HLP) to Braitman (outside consultant)	Preparation for SEC hearings	Work product; nontestifying expert

APPENDIX C  
DOCUMENTS RE: A TESTIFYING EXPERT

627040

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
195	3/21/77	Memorandum	Copeland (attorney for HLP) to Simmons (HLP testifying expert)	Committee on Power for the Southwest	Attorney-client
198	4/15/77	Memorandum	Hunsicker to Copeland, Cowan, Thrash (attorneys for HLP), copies to Simmons, Hunsicker	Abe Braitman (outside consultant) comments on FPC staff report of ERCOT-SWPP Interconnection and Reliability Evaluation	Work product; non-testifying expert
207	4/27/77	Memorandum	Copeland to Thrash, copy to Simmons	Revision of PUC testimony Outline No. 4	Work product
208	4/27/77	Memorandum	Copeland to Thrash	Revision of PUC testimony Outline No. 5	Work product

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
236	12/5/77	Memorandum	Thrash (attorney for HLP) to Reese, Jordan, Oprea, Dean (all HLP) & Simmons (HLP-testifying expert)	CSW-general	Attorney-client
238	12/13/77	Draft	Stagg: copies to Williams, Gooch, Braitman, Thrash, Gerber and Simmons (testifying experts)	Stagg study	Work product; non-testifying expert
242	1/19/78	Draft	Stagg to Oprea (HLP), Simmons (HLP testifying expert), McCuistion (HLP), Williams (HLP), Thrash, Copeland, Barnett, Gooch (all attorneys for HLP), Braitman (outside consultant), & Gerber (testifying expert).	Draft of Stagg study	Work product; nontestifying expert
243	1/20/78	Letter	Braitman (outside consultant) to Simmons (HLP-testifying expert)	Involvement of SWPP & NERC in CSW - ERCOT controversy	Work product; nontestifying expert

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
244	1/24/78	Letter	Copeland (attorney for HLP) to Simmons	Draft of letter concerning NERC-TAC review of ERCOT/SWPP inter-connection	Work product
260	5/25/78	Draft	Stagg (outside consultant) to Oprea (HLP), Simmons (testifying expert), McCuistion (HLP), Williams (HLP) Thrash, Copeland, Barnett, Gooch, Hunsicker (attorneys for HLP), Braitman (outside consultant) & Gerber (testifying expert)	Preliminary draft of Stagg Systems Report.	Work product; nontestifying expert
266	7/11/78	Memorandum	Hunsicker (attorney for HLP) to Braitman (outside consultant), Copeland (attorney for HLP) Simmons, Stagg, Thrash	FERC staff report	Attorney-client
268	7/19/78	Memorandum Draft	Thrash (HLP attorney) to Simmons (testifying expert)	ERCOT Report	Attorney-client

627012

<u>Document Number</u>	<u>Date</u>	<u>Type of Document</u>	<u>Identify of Author and Addressee</u>	<u>Subject</u>	<u>Basis for Claimed Privilege</u>
275	8/11/78	Letter	Braitman (outside consultant) to Simmons	Preparation for SEC hear- ings	Work product; nontestifying expert

627043