



NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | | |
|--------------------------------|----|-----------------|---------|
| In the Matter of | \$ | NRC Docket Nos. | 50-498A |
| | \$ | | 50-499A |
| HOUSTON LIGHTING & POWER | \$ | | |
| COMPANY, PUBLIC SERVICE | \$ | | |
| BOARD OF SAN ANTONIO, | \$ | | |
| CITY OF AUSTIN | \$ | | |
| CENTRAL POWER AND LIGHT | \$ | | |
| COMPANY, (South Texas Project, | \$ | | |
| Unit Nos. 1 and 2) | \$ | | |
| TEXAS UTILITIES GENERATING | \$ | | |
| COMPANY, et al. | \$ | NRC Docket Nos. | 50-498A |
| (Comanche Peak Steam Electric | \$ | | 50-499A |
| Station, Units 1 and 2) | \$ | | |

445
446

MOTION TO QUASH OR MODIFY SUBPOENA

COMES NOW the Public Utility Commission of Texas ("PUC") by and through its duly authorized federal agency representative, the Attorney General of Texas, and would make and file this Motion to Quash and/or Modify the subpoena as directed toward T. Sweatman, Chief Engineer of the PUC, said subpoena issued July 7, 1979 and the subpoena directed to "Keeper of the Records of the Public Utility Commission" issued July 9, 1979, all by the Acting Chairman of the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission, the Honorable Sheldon J. Wolfe.

The PUC would show that attached to said subpoena is a schedule of Subjects for Testimony and Production of Documents for the subpoena directed to T. Sweatman, Chief Engineer and a schedule of seven items directed to the Keeper of Records. As to the subpoena to T. Sweatman, the Commission would move to quash the subpoena requiring Mr.

332
628

7908130261

Sweatman to appear at 611 Ryan Plaza Drive, 10th Floor in the city of Arlington, Texas scheduled for the 24th day of July, 1979 at 9:30 o'clock a.m. First, the records and objects in the custody of the Commission required to be brought with him to Arlington, Texas, would be burdensome and unjust for many different reasons. The substance of such conclusions are is set forth in affidavits executed by Martha M. Bartow, Records Officer of the Public Utility Commission, attached to this Motion and identified as Exhibit "A", and R. Thomas Sweatman, Director of Engineering and Enforcement, attached and identified as Exhibit "B", both incorporated herein by reference for all purposes. Also attached is Exhibit "A-1", which is a list of the various dockets, maps and an estimate of the number of pages in such proceedings. We do not object to offering Mr. Sweatman's deposition at the offices of the Public Utility Commission of Texas at 7800 Shoal Creek Blvd., Suite 400 N., Austin, Travis County, Texas 78757. It is to be noted that one subpoena directs that the "Keeper of Records" for the PUC make available for inspection and copying at the offices of the Commission in Austin, Texas on the 23rd day of July, 1979 at 10:00 o'clock a.m. numerous records and documents. There is no reason why the same personnel can't remain the next day to take Mr. Sweatman's deposition. Such removal of records will violate PUC policy and would deprive other segments of the public access to portions of the documents

as well. Furthermore, physical removal increases the possibility of loss and damage which is unreasonable and detrimental to the record keeping function of the PUC.

In addition, the above captioned proceedings also relate to certain matters in litigation commonly referred to as Docket 14, in which the Attorney General's office is defending the Public Utility Commission's order in said proceeding in state court, with parallel proceedings pending in other federal forums, including the United States Supreme Court. It is not known at this time what reports, memoranda or records sought under this subpoena may fall under information and material that is privileged in its use in the defense of such lawsuit in state and federal courts. Protective orders may be necessary in the absence of an agreement between counsel. Prior to such agreement or orders, the PUC must resist such carte blanche demand for records.

There is also a question of relevancy of much of the material requested which may be resolved by agreement also.

WHEREFORE, the PUC prays that the subpoenas directed to the Keeper of Records and T. Sweatman be quashed for the above and foregoing reasons, or alternatively, modified to allow reasonable discovery of pertinent and relevant data and to permit the taking of Thomas Sweatman's deposition at the offices of the PUC at 7800 Shoal Creek Blvd.,

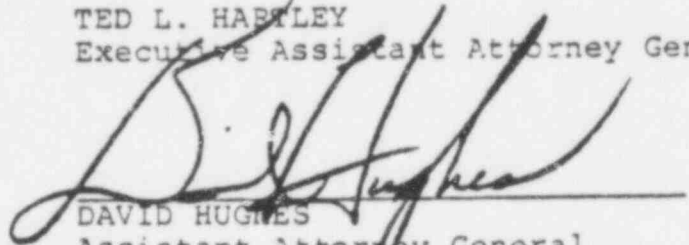
Austin, Travis County, Texas, the only office for such regulatory body in the State of Texas.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED L. HARTLEY
Executive Assistant Attorney General



DAVID HUGHES
Assistant Attorney General
Chief, Energy Division

P. O. Box 12548, Capitol Station
Austin, Texas 78711



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

| | | |
|--------------------------------|----|-------------------------|
| In the Matter of | \$ | NRC Docket Nos. 50-498A |
| | \$ | 50-499A |
| HOUSTON LIGHTING & POWER | \$ | |
| COMPANY, PUBLIC SERVICE | \$ | |
| BOARD OF SAN ANTONIO, | \$ | |
| CITY OF AUSTIN | \$ | |
| CENTRAL POWER AND LIGHT | \$ | |
| COMPANY, (South Texas Project, | \$ | |
| Unit Nos. 1 and 2) | \$ | |
| TEXAS UTILITIES GENERATING | \$ | |
| COMPANY, et al. | \$ | NRC Docket Nos. 50-498A |
| (Comanche Peak Steam Electric | \$ | 50-499A |
| Station, Units 1 and 2) | \$ | |

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing
Motion to Quash or Modify Subpoena has been made on the fol-
lowing parties listed hereto this 19th day of July, 1979,
by depositing copies thereof in the United States mail,
first class, postage prepaid.

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

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

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

Jerome E. Sharfman, Esq.
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

Samuel J. Chilk, Secretary
Office of the Secretary of the
Commission
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 Co.
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, Esq.
W. Roger Wilson, Esq.
Matthews, Nowlin, Macfarlane
& Barrett
1500 Alamo National Bldg.
San Antonio, Texas 78205

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

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

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

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

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

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

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

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

Joseph Irion Worsham, Esq.
Merlyn D. Sampels, Esq.
Spencer C. Relyea, Esq.
Worsham, Forsythe & Sample
2001 Bryan Tower, Suite 25
Dallas, Texas 75201

Joseph Knotts, Esq.
Nicholas S. Reynolds, Esq.
Debevoise & Liberman
1200 17th St., N.W.
Washington, D.C. 20036

Douglas F. John, Esq.
Akin, Gump, Hauer & Feld
1100 Madison Office Bldg.
1155 15th St., N.W.
Washington, D.C. 20024

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

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

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

John W. Davidson, Esq.
Sawtelle, Wade, Davidson
& Tidwell
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

Judith L. Harris
U.S. Dept. of Justice
Antitrust Division, Energy Sec.
414 11th St., N.W., Room 8303
Washington, D.C. 20530

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

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

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

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

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

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

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

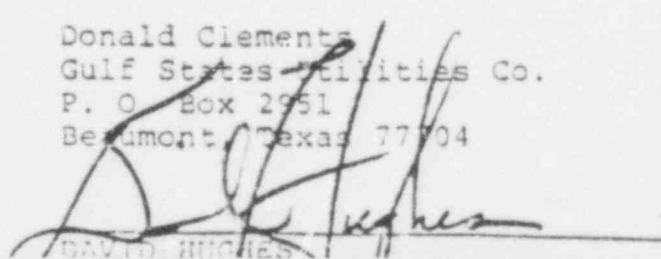
628 338
Donald Clements
Gulf States Utilities Co.
P. O. Box 2951
Beaumont, Texas 77704

DAVID HUGHES



EXHIBIT A"

628 339

STATE OF TEXAS

COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, personally appeared Martha M. Bartow, Records Officer for the Public Utility Commission of Texas, and after being by me duly sworn deposed as follows: My name is Martha Bartow. I am above the age of twenty-one (21) years and am competent to testify. I am the custodian of the official records of the Public Utility Commission of Texas and am responsible to the Commissioners of the Public Utility Commission for the maintenance of the official Commission records. I have reviewed the subpoena issued by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission to me and have several comments to make concerning this subpoena. The subpoena is so broad and inclusive that I am unable to understand what specific matters or material are covered therein. The subject matters contained in subparagraphs 1 through 7 are so global and unclear in nature that if literally taken would require the production of literally thousands of pages of documents at great expense and inconvenience to the Public Utility Commission of Texas. It is the policy of the Public Utility Commission of Texas that its official records should not be removed from its offices; and therefore, I would request the moving party in this subpoena to inspect whatever records deemed relevant and actually necessary by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission at the Commission's offices. As an example of the tremendous undertaking to produce the requested documents, I and members of my staff would be forced to undertake a complete analysis of literally hundreds of dockets and matters that have occurred before the Public Utility Commission of Texas that may, either directly or indirectly, affect or be related to the items requested in subparagraphs 1 through 7 of the subpoena. Such a detailed analysis by the Commission staff would not only be time consuming but expensive as well. As an example, to point out the impossibility of complying with this subpoena, subparagraph 2 of the subpoena concerning all certification records relating to Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, and the Southeast Division of Community Public Service Company involve approximately 110 separate dockets or proceedings before the Public Utility Commission of Texas. In addition the requirements in subparagraph 3 of the subpoena requiring production of "all documents, internal memoranda, reports, maps, etc., which related in any way to the retention or possible retention of existing customers, or securing new customers, or service areas or territories (or parts thereof), by Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, Community Public Service Company (Southeast Division), and also any member cooperatives of the Tex-La Cooperatives" would require a detailed analysis of literally hundreds of other dockets, complaints, internal memoranda contained in other divisions or departments of the

Commission and would be an impossible task to perform in the time constraint set forth in the subpoena and, even if the time constraints were modified, could be done only at a great expense to the Public Utility Commission of Texas. In addition subparagraphs 5 and 7 require me to produce documents dating back to 1974 and 1970 respectively, and yet the Public Utility Commission of Texas did not come into existence until September 1, 1975; therefore, it would be impossible for me to produce documents, if any exist, involving other regulatory authorities who were the primary regulators of the utilities involved prior to September 1, 1975. The Commission has on file numerous minor certification boundary line modifications and many service complaints involving at least indirectly the Commission's certification jurisdiction and customer relations which I doubt would be of any benefit to any party or the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission. Yet the subpoena, if literally read, would require me to produce every service quality complaint affecting certification matters and every boundary change affected or ever requested by the companies involved. Subparagraph 7 of the subpoena, if literally read, would require the production of portions of approximately 68 rate cases, and it would be extremely burdensome to analyze and locate any documents contained in those rate cases relating to the matters contained in said subparagraph 7 and could only be done at a great expense and time consuming effort not only by me but by other members of my staff. I would also state that several of the certification and rate cases included in paragraphs 1, 2, 3, and 7 are on appeal to various courts of different jurisdictions, and the Commission's official records have been filed with the District Clerk or officer of the Court as the case may be. In view of the foregoing, I would request that the subpoena be modified and that the material and documents sought be specified with such particularity that I can make same subject to inspection and production of the parties requesting this subpoena if such documents are in fact in my possession.

EXECUTED this the 18th day of July, 1979.

Martha M. Bartow
Martha M. Bartow

SWORN TO AND SUBSCRIBED BEFORE ME by the said Martha M. Bartow on this the 18th day of July, 1979, to certify which witness my hand and seal of office.

Notary Public in and for
Travis County, Texas

My Commission Expires:

6-1-81



E X H I B I T "A-1"

528 342

Houston Lighting and Power Company

| Certification: | Docket 41 | Pages | Maps |
|----------------|-----------|-------|------|
| | 44 | | |
| | 317 | 12 | 2 |
| | 332 | 11 | |
| | 385 | 10 | |
| | 455 | 12 | |
| | 529 | 14 | |
| | 566 | 18 | |
| | 581 | 16 | |
| | 582 | 13 | |
| | 583 | 13 | |
| | 692 | 294 | 5 |
| | 2495 | 33 | |
| | 2512 | 27 | |
| | 736 | 10 | |
| | 737 | 8 | 1 |
| | 1482 | 1743 | 28 |
| | 1606 | 7 | |
| | 1611 | 23 | |
| | 1612 | 16 | |
| | 1652 | 18 | |
| | 1802 | 14 | 1 |
| | 1864 | 15 | |
| | 1885 | 33 | |
| | 88 | 90 | |
| | 2251 | | |
| | 2375 | | |
| | 2384 | | |
| | 2389 | | |
| | 2522 | 525 | |
| Rate/Tariff | 111 | 42 | |
| | 2001 | 6185 | 1 |
| | 2248 | 929 | |
| | 2260 | | |
| | 2624 | | |
| | 2676 | | |

628 343

Texas Power and Light Co.

| Certification: | Docket | Pages | 962 | Maps | 55 |
|----------------|---------|-----------------|-----|------|----|
| | 1 | | | | |
| | 5 | | | | |
| | 17 | | | | |
| | 28 | | | | |
| | 44 | | | | |
| | 45 | | | | |
| | 52 | | | | |
| | 57 | | | | |
| | 59 | | | | |
| | 60 | | | | |
| | 61 | | | | |
| | 461 | 21 | | | |
| | 462 | 15 | | | |
| | 463 | 12 | | | |
| | 464 | 20 | | | 2 |
| | 629 | 50 | | | 2 |
| | 631 | 31 | | | |
| | 542 | 25 | | | 2 |
| | 778 | 12 | | | |
| | 779 | 45 | | | |
| | 801 | 10 | | | |
| | 896 | 22 | | | |
| | 1475 | 40 + 1 cassette | | | 7 |
| | 1818 | 9 | | | 3 |
| | 1922 | 24 | | | |
| | 1923 | 40 | | | |
| | 1924 | 14 | | | |
| | 1928 | 27 | | | |
| | 2262 | 17 | | | |
| | 2330 | 18 | | | 3 |
| | 2349 | 20 | | | |
| | 2377 | 25 | | | |
| | 2378 | 15 | | | |
| | 2435 | 18 | | | |
| | 2530 | 16 | | | |
| | 2650 | | | | |
| | EM-5-76 | | | | |

Texas Power and Light Co. (Cont'd)

| | | | | | | |
|-------|--------|------|-------|-------|------|---|
| Rate: | Docket | 178 | Pages | 10021 | Maps | 1 |
| | | 290 | | 67 | | |
| | | 291 | | | | |
| | | 444 | | | | |
| | | 445 | | | | |
| | | 1789 | | 4550 | | |
| | | 1813 | | | | |
| | | 2018 | | | | |
| | | 1905 | | | | |
| | | 1934 | | | | |
| | | 1939 | | | | |
| | | 1940 | | | | |
| | | 1941 | | | | |
| | | 1942 | | | | |
| | | 1943 | | | | |
| | | 1948 | | | | |
| | | 1949 | | | | |
| | | 1950 | | | | |
| | | 1951 | | | | |
| | | 1952 | | | | |
| | | 1953 | | | | |
| | | 1954 | | | | |
| | | 1955 | | | | |
| | | 1959 | | | | |
| | | 1960 | | | | |
| | | 1961 | | | | |
| | | 1517 | | 9375 | | |
| | | 2319 | | 150 | | |

Gulf States

| Certification: | Docket | 17 | Pages | Maps |
|----------------|--------|----|-------|------|
| | 21 | | | |
| | 52 | | | |
| | 130 | | 21 | |
| | 151 | | 17 | |
| | 409 | | 1435 | 39 |
| | 427 | | 66 | 1 |
| | 701 | | 175 | 74 |
| | 857 | | 650 | 4 |
| | 1927 | | 26 | 2 |
| | 2227 | | 87 | 12 |
| | 2228 | | | |
| | 2275 | | | |
| | 2276 | | | |
| | 2362 | | 23 | 1 |
| | 2485 | | | |
| | 2601 | | | |
| | 2688 | | | |

| -Rate: | | |
|--------|------|------|
| | 1528 | 8225 |
| | 1889 | 1120 |
| | 1890 | |
| | 1891 | |
| | 1892 | |
| | 1893 | |
| | 1945 | |
| | 1968 | |
| | 1969 | |
| | 1970 | |
| | 1971 | |
| | 2009 | |
| | 2010 | |
| | 2015 | |
| | 2677 | |

Tex-La Cooperatives

Wood County Electric

| Certification | Docket | 460 | Pages | 12 | Maps | 1 |
|---------------|--------|------|-------------------|----|---------|----|
| | | 497 | | 12 | | |
| | | 1711 | | 10 | | 2 |
| | | 5 | | 1 | 2 tapes | 6 |
| | | 28 | | 20 | 1 tape | 15 |
| | | 60 | (See Kaufman Co.) | | | |

Rate 2702

Upshur Rural

| | | | | |
|------|------------------|------|--|----|
| 102 | | | | |
| 895 | MF | 4 | | 1 |
| 1380 | MF | 4 | | 1 |
| 1779 | MF | 4 | | 1 |
| 2666 | | | | |
| 2667 | | | | |
| 2706 | | 10 | | |
| 2668 | | | | |
| 5 | (See Wood Co.) | | | |
| 28 | (See Bowie Cass) | | | |
| 53 | | 1100 | | 45 |

Kaufman Co. Elect 60 625,2 tapes 36

Jasper-Newton 41 (See Sam Houston)
1827 25 1

Hunt Collin 60 (see above)

Fannin County Electric 319 20
28 (See Wood Co.)
60 (See Kaufman Co.)

Deep East Texas Electric 113 20
2095 20
54 30 7

628 347

| | | | |
|--------------------------|--------------------------|--|--------------|
| Bowie Cass Electric Coop | Docket 256 28 | Pages 15 200 | Maps 2 15 |
| Farmers Electric Coop. | 8 458 60 28 | 910 MF 4 (See Kaufman Co.) (See Bowie Cass) | 30 1 |
| Sam Houston Electric | 689 811 1911 41 | 20 10 780 | 1 80 |
| Grayson Collin | 320 45 60 | 200 (See Kaufman Co.) | 27 |
| Cherokee County (rate) | 486 5 | (See Wood Co.) | |
| Rusk County | 5 | (See Wood Co.) | |
| Lamar County | 28 | (See Bowie Cass) | |

Community Public Service Company (Southeastern Div.)

| | | | | |
|----------------|--------|------|-----|----|
| Certification: | Docket | 1235 | 13 | 1 |
| | | 2069 | 15 | 1 |
| | | 41 | 495 | 95 |

| | | | | |
|-------|--------|--------|-----|---|
| Rate: | Docket | 177 | 525 | 0 |
| | | 289 | 20 | 0 |
| | | 448 | 15 | 0 |
| | | 807 | 40 | 0 |
| | | 2101 | 300 | 0 |
| | | 2231 | 500 | 0 |
| | | 2041) | 350 | |
| | | 2042) | | |
| | | 2102) | | |

110 Cent Invoice
68 Rate
178 Total with Rate

628 349

Note: All certifications and amended certifications require maps.
Pages are probably grossly under-estimated. Over 50,000 pages
would be involved with the dockets listed, construction
reports, long range plans, tariffs etc.



EXHIBIT "B"

628 351

STATE OF TEXAS

COUNTY OF TRAVIS

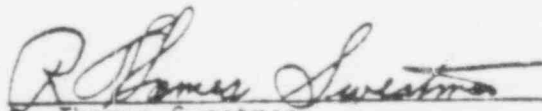
BEFORE ME, the undersigned authority, personally appeared R. Thomas Sweatman, Director of Engineering and Enforcement for the Public Utility Commission of Texas, and after being by me duly sworn deposed as follows: My name is R. Thomas Sweatman. I am above the age of twenty-one (21) years and am competent to testify. I am the Director of Engineering and Enforcement for the Public Utility Commission of Texas. I have reviewed the subpoena issued by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission to me and have several comments to make concerning this subpoena. The subpoena is so broad and inclusive that I am unable to understand what specific matters or material are covered therein. The subject matters contained in subparagraphs 1 through 9 are so global and unclear in nature that if literally taken would require the production of many pages of documents at great expense and inconvenience to the Public Utility Commission of Texas. It is the policy of the Public Utility Commission of Texas that its official records should not be removed from its offices; and therefore, I would request the moving party in this subpoena to inspect whatever records deemed relevant and actually necessary by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission at the Commission's offices. As an example of the tremendous undertaking to produce the requested documents, I and members of my staff would be forced to undertake a complete analysis of literally hundreds of dockets and matters that have occurred before the Public Utility Commission of Texas that may, either directly or indirectly, affect or be related to the items requested in subparagraphs 1 through 9 of the subpoena. Such a detailed analysis by me and my staff would not only be time consuming but expensive as well. As an example, to point out the impossibility of complying with this subpoena, subparagraph 2 of the subpoena concerning all certification records relating to Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, and the Southeast Division of Community Public Service Company involve approximately 110 separate dockets or proceedings before the Public Utility Commission of Texas. In addition the requirements in subparagraph 3 of the subpoena requiring production of "all documents, internal memoranda, reports, maps, etc., which related in any way to the retention or possible retention of existing customers, or securing new customers, or service areas or territories (or parts thereof), by Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, Community Public Service Company (Southeast Division), and also any member cooperatives of the Tex-La Cooperatives" would require a detailed analysis of literally hundreds of other dockets, complaints, internal memoranda contained not only in my division but in other divisions or departments of the Commission and would be an impossible task to perform in the time constraint set forth in the subpoena and, even if the time constraints were modified, could be done only at a great expense to the

628 352

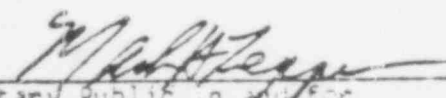
Public Utility Commission of Texas. In addition subparagraphs 4, 5 and 7 require me to produce documents dating back to 1968, 1974, and 1970 respectively, and yet the Public Utility Commission of Texas did not come into existence until September 1, 1975; therefore, it would be impossible for me to produce documents, if any exist, involving other regulatory authorities who were the primary regulators of the utilities involved prior to September 1, 1975. The Commission has on file numerous minor certification boundary line modifications and many service complaints involving at least indirectly the Commission's certification jurisdiction and customer relations, acquisition of new customers and retention of present customers, which I doubt would be of any benefit to any party or the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission. Yet the subpoena, if literally read, would require me to produce every service quality complaint affecting certification matters and every major or minor boundary change affected or even requested by the companies involved. Subparagraph 7 of the subpoena, if literally read, would require the production of portions of approximately 68 rate cases, and it would be extremely burdensome to analyze and locate any documents contained in those rate cases relating to the matters contained in said subparagraph 7 and could only be done at a great expense and time consuming effort not only by me but by other members of my staff. I would also state that several of the certification and rate cases included as a part of in paragraphs 1, 2, 3, and 7 are on appeal to various courts of different jurisdictions, and the Commission's official records have been filed with the District Clerk or officer of the Court as the case may be. In addition, such documents, work product, and internal memos among the Commission Staff and the attorneys representing the Staff are not subject to the Texas Open Records Act nor discovery, if involved in pending or contemplated litigation. In view of the foregoing, I would request that the subpoena be modified and that the material and documents sought be specified with such particularity that I can make same subject to inspection and production of the parties requesting this subpoena if such documents are in fact in my possession at the Commission's offices in Austin, Texas.

In addition, since I am subject to be deposed, I would request that such deposition be taken, if actually deemed necessary, at the Commission's offices in Austin, Texas, so I may refer to my files and the Commission's official files, as the case may be, during the course of such deposition without transporting all of such files to Arlington, Texas, which would be very burdensome, time consuming, and expensive on the part of the Public Utility Commission of Texas.

EXECUTED this the 18th day of July, 1979.


R. Thomas Sweatman

SWORN TO AND SUBSCRIBED BEFORE ME by the said R. Thomas Sweatman on this the 18th day of July, 1979, to certify which witness my hand and seal of office.


Notary Public in and for
Travis County, Texas

My Commission Expires: 6-1-81

353