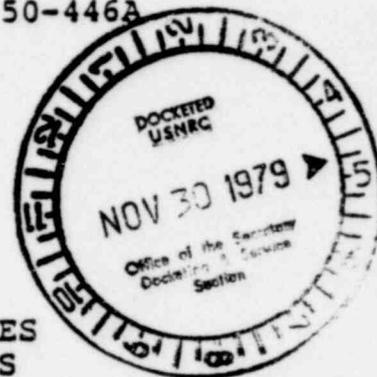


UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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



MOTION OF HOUSTON LIGHTING & POWER  
COMPANY TO COMPEL THE DEPARTMENT OF  
JUSTICE AND THE NRC STAFF TO RESPOND  
TO HOUSTON'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Houston Lighting & Power Company ("Houston") respectfully requests that the Board compel the Department of Justice ("Department") and the NRC Staff ("Staff") to furnish complete responses to Houston's First Set of Interrogatories and Requests for the Production of Documents. Houston further requests that the Board direct the Department and the Staff to furnish their respective responses no later than December 14, 1979.<sup>1/</sup>

Houston served the Department with its initial set of interrogatories on August 1, 1978. The Department filed its Answer on October 10, 1978, more than thirteen months ago. In its Answer, the Department stated that as of that time it was unable to respond to all or part of fifteen different discovery requests and that responses to those

<sup>1/</sup> This motion is not inconsistent with the time limitations for a motion to compel discovery as provided in 10 CFR §2.740(f)(1). Both the Department and the Staff indicated in their respective Answers that fuller responses to Houston's discovery requests would be forthcoming as discovery progressed. Thus, Houston had no reason to seek a motion to compel at the time that the parties served their respective Answers. Only in light of the prolonged silence of the Department and the Staff had the need arisen for Houston to seek an order compelling complete responses.

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discovery requests would have to await the substantial completion of discovery. <sup>2/</sup> For instance, Houston posed the following interrogatories 10(b), (c) and (e), to the Department:

10. State the basis for, and provide all documents relating to, the Division's allegation that "these [smaller] utilities [dependent on natural gas] must switch to alternatives, such as coal, lignite, and nuclear fueled generation, if they are to continue in existence, let alone be able to compete with their larger neighbors, such as HL&P and TU," (p. 7) and in so doing:

. . .

(b) explain exactly how HL&P has impaired each specified system's ability to convert to alternate fuels;

(c) state whether you have any evidence showing that HL&P was motivated by anticompetitive considerations in taking such action and set forth each specific fact relating to such evidence;

. . .

(e) identify (1) each product and geographic market wherein each identified smaller utility competes with HL&P or TU, (2) the type and extent of competition in each such market, and (3) the market share of each utility in each such market.

The Department furnished the following response:

Interrogatory 10(b) & (c)

Because of the delay in obtaining documents from HL&P and TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

. . .

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<sup>2/</sup> The Department has once supplemented its responses to Houston's First Set of Interrogatories and Requests for Production of Documents. On December 4, 1978, the Department corrected two typographical errors and identified one additional person from whom it had sought information. No additional substantive information was provided, however.

Interrogatory 10(e)

Because of the delay in obtaining documents from HL&P and TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

Similarly, Houston served its First Set of Interrogatories and Requests for Production of Documents <sup>3/</sup> addressed to the Staff on October 17, 1978. The Staff furnished its Answer on December 1, 1978. In its Answer, the Staff declined to respond to parts of fifteen discovery requests on the grounds that complete responses had to await further discovery. For example, Houston posed the following interrogatory:

7. (a) Does the Staff contend that Houston possesses monopoly power or some other degree of market power relevant to this proceeding?

(b) If so, (1) identify each product and geographic market in which Houston has such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) identify every action taken by Houston to acquire or maintain its alleged monopoly power, (5) identify each abuse of each instance of such power by Houston, and (6) identify each change in such conduct since October 1974.

(c) Provide all documents relevant to this interrogatory.

The Staff furnished the following response:

(a) Yes.

(b) The response to this subpart requires an economic analysis which the Staff has not, as yet, obtained. As this information becomes available to us, we shall undertake to more fully respond to this interrogatory.

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Houston asserts that the time has come for both the Department and the Staff to furnish complete responses to Houston's initial

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<sup>3/</sup> Although there were substantial similarities between Houston's initial discovery requests addressed to the Department and to the Staff respectively, the requests were not identical.

discovery requests. Since the filing of their respective Answers, both parties have actively participated in the discovery process. They have posed extensive interrogatories, deposed numerous individuals and subpoenaed countless documents. In short, the parties have had more than adequate time and opportunity to acquire whatever information they needed to furnish complete substantive responses.

Granting this motion would not impose any new obligations on either the Department or the Staff. This Board's ruling at the June 1, 1978 prehearing conference (Tr. 105) and the instructions in Houston's interrogatories already require both parties to supplement their respective responses as they learn of additional information. Houston merely seeks to compel the Department and the Staff to honor their current obligations.

The December 31, 1979 deadline which the Board has established for termination of discovery in this proceeding is rapidly approaching. <sup>4/</sup> Houston has endeavored to complete its discovery activities in accordance with the Board's schedule. However, Houston cannot complete its discovery activities unless the Department and the Staff promptly provide the information sought in Houston's initial set of interrogatories.

A defendant in an antitrust case is clearly entitled to discover the factual bases of a plaintiff's allegations at an early enough time to permit the defendant to properly prepare for litigation. In

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<sup>4/</sup> Order of June 24, 1979, at 1.

Radzik v. Chicagoland Recreational Vehicle Dealers Association, Inc., 1972 Trade Cases ¶73,848 (E.D. Ill. 1972), the court ordered the plaintiff to respond to the defendant's interrogatories seeking to elicit the plaintiff's views on such matters as competition and relevant markets. The court stated that "... the defendant is entitled to learn in advance of trial what plaintiff contends are the facts so that the defendant will be able to ascertain what he must meet at trial." Radzik, 1972 Trade Cases at 91,563.

Similarly, in Sargent-Welch Scientific Company v. Ventron Corporation, 59 F.R.D. 500, 1973-2 Trade Cases ¶74,791 (E.D. Ill. 1973), the court directed the plaintiff to respond to the defendant's interrogatories by furnishing the factual opinions that underlay plaintiff's various antitrust allegations. The court explained its decision as follows:

It is clear that defendants are entitled to know the facts upon which plaintiff's claim is founded. Mutual knowledge of the relevant facts is essential to proper litigation. Either party may compel the other to disclose what relevant facts he has in his possession.

Sargent-Welch, 59 F.R.D. at 503, 1973-2 Trade Cases at 95,544. Accord, B-H Transportation Company v. Great Atlantic & Pacific Tea Company, 44 F.R.D. 436 (N.D.N.Y. 1968). <sup>5/</sup>

In this proceeding, however, Houston still has not obtained answers

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<sup>5/</sup> Obtaining information as to what case the opposing party intends to present at trial is in fact the basic purpose of discovery. As the Supreme Court has stated:

Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation. To that end, either party may compel the other to disgorge whatever facts he has in his possession. The deposition-discovery procedure simply advances

(continued next page)

to interrogatories addressing such fundamental antitrust concerns as competition,<sup>6/</sup> alleged injury to competition<sup>7/</sup> and relevant product and geographic markets.<sup>8/</sup> In fact, at this point in time, neither the Department nor the Staff has provided Houston with any detailed account of the market theories which each expects to rely upon in this proceeding.

Houston is entitled to know the antitrust theories, and underlying factual allegations on which the Government will rely sufficiently in advance of the close of discovery to be able to test these theories and to seek evidence which refutes them. Obviously, Houston cannot do so until this information is provided. Nor can Houston fully prepare its case for the hearing without this information.

In view of the answers that the Government parties' expert witnesses have given during their depositions, Houston anticipates that in their responses to this motion the Department and the Staff will indicate that they have not yet settled upon satisfactory theories of markets and competition. Naturally, the plaintiff in every antitrust case would like to keep open indefinitely his options with regard to

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5/ (cont.)

the stage at which disclosure can be compelled from the time of trial to the period preceeding it, thus reducing the possibility of surprise.

Hickman v. Taylor, 329 U.S. 495, 501, 67 S. Ct. 385, 392, 91 L. Ed. 451, 460 (1947).

6/ See, e.g., interrogatories 13(b) and (f) addressed to the Department and interrogatory 17 addressed to the Staff.

7/ See, e.g., interrogatory 5(b) addressed to the Department and interrogatories 13-17 addressed to the Staff.

8/ See, e.g., interrogatory 14(b) addressed to the Department and interrogatory 7(b) addressed to the Staff.

theories of relevant markets and competition. However, at some point every plaintiff must decide what his theory of the case will be. With only a few weeks remaining before the December 31, 1979 discovery deadline, the time has come for both the Department and the Staff to settle upon the theories which each intends to litigate in this proceeding.

Houston has waited long enough to obtain the important information sought in its initial discovery requests. Neither the Department nor the Staff should be permitted to delay their respective responses any longer. Accordingly, Houston respectfully requests that the Board compel the Department to furnish complete responses to the following numbered discovery requests included in Houston's First Set of Interrogatories and Requests for Production of Documents to Antitrust Division, U.S. Department of Justice, dated August 1, 1978: 1(c) and (d); 5(b) and (c); 9; 10(b), (c) and (e); 11; 13(b), (d) and (f); 14(b) and (c); 15(b) and (c); 16(b) and (c); 20(b) and (c); 23; 25(a) and (c); 26(b), (c) and (e); 32(b), (c) and (d); 34(b), (c), (f) and (j). <sup>9/</sup>

Houston further requests that the Board compel the Staff to furnish complete responses to the following numbered discovery requests included in Houston's First Set of Interrogatories and Requests for Production of Documents to NRC Staff, dated October 17, 1978: 5; 6; 7(b) and (c); 8(b) and (c); 9(b) and (c); 13; 14; 15; 16; 17; 20;

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<sup>9/</sup> The complete text of each of these discovery requests and the Department's corresponding responses accompany this motion and are labelled Appendix A.

23; 24; 25 and 26.<sup>10/</sup> Finally, in light of the short time remaining before the expiration of the discovery period, Houston requests that the Board direct the Department and the Staff to provide their respective responses no later than December 14, 1979.

Respectfully submitted,

*Peter G. Flynn*

Peter G. Flynn  
Attorney for Houston Lighting &  
Power Company

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<sup>10/</sup>The complete text of each of these discovery requests and the Staff's corresponding responses accompany this motion and are labelled Appendix B.

## APPENDIX A

Houston's Interrogatories to the Department of Justice and the corresponding responses of the Department.

### Houston's Interrogatory

1. At several points in the South Texas OL advice letter the Division refers to an "intrastate only agreement" between Houston and TU.

. . .

- (c) State whether the Division has knowledge of any specific refusal by HL&P or TU to interconnect with an interstate utility in furtherance of the alleged agreement, and as to each such refusal furnish the following information:
  - (1) Identification of each person representing HL&P or TU who decided upon or made the refusal;
  - (2) identification of the refused utility;
  - (3) identification of each person who received the refusal;
  - (4) identification of the refused interconnection;
  - (5) description of the circumstances surrounding the refusals;
  - (6) date of refusal;
  - (7) form of refusal (i.e., written or oral, in person or by telephone), and, if oral, identification of all persons present;
  - (8) action taken by the refused utility;
  - (9) identification of any other utilities or persons with whom HL&P or TU consulted or communicated before making the refusal or as a result of the refusal; and
  - (10) date and form of such consultation or communication.
- (d) State the basis for, and provide all documents relating to, the Division's allegation that "the clear intent of the [intrastate only] agreement is to prevent the parties from entering into interstate commerce". (p. 8).

### Department's Response

- 1(c) Because of the delay in obtaining documents from HL&P and
- (d) TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

### Houston's Interrogatory

5. With respect to the Division's statement in the Allens Creek advice letter that the Division "has uncovered no evidence that would indicate that [Houston] is attempting to prevent participation in the joint ownership of nuclear facilities by any system or is otherwise presently impairing the competitive opportunities of other systems" (p. 3):

. . .

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- 5(b) state whether the Division has any evidence that HL&P is now attempting to prevent participation in the joint ownership of nuclear facilities or is otherwise impairing the competitive opportunities of other systems, and if so, specify each specific instance of any alleged attempt to do so and describe the manner in which there has been a significant change since October, 1974 in HL&P's conduct toward any electric system identified in response to this interrogatory; and
- (c) provide all documents which relate to the subject matter of this interrogatory, the advice rendered in the Allens Creek advice letter, or any communications had in the course of the Allens Creek antitrust review.

Department's Response

- 5(b) At the present time, the Department is continuing its investigation and review of available discovery materials. Because of the delay in obtaining documents from HL&P and TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory.

Houston's Interrogatory

9. State the basis for, and provide all documents relating to, the Division's allegation that "this changing fuel situation has had a significant impact on the competitive posture of the various utilities in Texas" (p. 7), and in so doing explain what is meant by the term "competitive posture"; identify each of the referenced "various utilities in Texas"; and explain the exact manner in which the alleged change in the fuel situation has impaired their competitive posture in specified product and geographic markets.

Department's Response

9. The term "competitive posture" refers to a system's ability to compete. As gas prices have risen in Texas the cost of generating electric power has likewise increased. An increase in the cost of power may have an adverse effect on a utility's ability to compete if its competitor is not exposed to the same increase in power costs, or if its competitor can otherwise mitigate any potential increases in power costs by increasing its coordinating activities and switching to alternative types of generation with relatively lower overall costs.

"The various utilities" refers to utilities in Texas with gas fired generation. While the Department had no specific utilities in mind with its reference to the various utilities, clearly those depending in whole or in part on the pipeline system of Lo Vaca Gas Gathering Company for their natural gas supply or on any other pipeline supplier whose prices have increased commensurate with Lo Vaca's gas prices are the most affected. This group includes Central Power & Light, City Public Service Board of San Antonio, City of Austin, City of Brownsville, South Texas Electric Cooperative, Medina Electric Cooperative, and City of Robstown. The Department is still in the process of analyzing the effect of the increased gas prices on the power supply costs of these and other utilities in the state and is not in a position at present to explain the exact manner in which the fuel situation has impaired their competitive posture in any market relevant for antitrust analysis purposes. In general, however, increased costs of generating power will have an adverse effect on any and all levels of marketing electric power, whether retail, wholesale, or at the coordinating services market.

#### Houston's Interrogatory

10. State the basis for, and provide all documents relating to, the Division's allegation that "these [smaller] utilities [dependent on natural gas] must switch to alternatives, such as coal, lignite, and nuclear fueled generation, if they are to continue in existence, let alone be able to compete with their larger neighbors, such as HL&P and TU," (p. 7) and in so doing:
- (b) explain exactly how HL&P has impaired each specified system's ability to convert to alternate fuels;
  - (c) state whether you have any evidence showing that HL&P was motivated by anticompetitive considerations in taking such action and set forth each specific fact related to such evidence;

#### Department's Response

- 10(b) Because of the delay in obtaining documents from HL&P and  
(c) TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

#### Houston's Interrogatory

- 10(e) identify (1) each product and geographic market wherein each identified smaller utility competes with HL&P or TU, (2) the type and extent of competition in each such market, and (3) the market share of each utility in each such market.

Department's Response

- 10(e) Because of the delay in obtaining documents from HL&P and TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

Houston's Interrogatory

- 11(a) Does the Division have any evidence showing that Houston has denied any other utility access to or participation in the South Texas Project (STP) or any other nuclear plant?
- (b) If so, describe the circumstances surrounding each such denial, including: (1) identification of the requesting utility, (2) name and title of the person making the request, (3) form of request (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the request was made, (4) date of request, (5) person to whom request was addressed, (6) name of person who responded to request, (7) form of response (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the response was given, (8) person to whom the response was addressed, and (9) date of response.
- (c) Provide all documents relating to the subject matter of this interrogatory.

Department's Response

- 11(a) HL&P conditioned participation in the South Texas Project upon the requirement that the utility requesting participation be engage [sic] exclusively in intrastate commerce within the State of Texas. The Department, however, is not alleging at this [sic] time that HL&P has denied any utilities access to or participation in the South Texas Project (STP) or any other nuclear plant other than through its actions of disconnecting from certain of the STP joint participants in May of 1976, and refusing to reestablish those interconnections while those other joint participants were operating in interstate commerce.

The Department is continuing at the present time its investigation and document review relating to the contentions offered in response to this interrogatory. Should this investigation and document review develop any further information, the Department will provide this as part of its continuing obligation to up-date its responses to this set of interrogatories.

Houston's Interrogatory

- 11(d) State whether the Division has knowledge of the fact that a utility has considered requesting Houston to grant access to or participation in STP but did not communicate such request to HL&P. If so, specify the identity of any such utility and provide all documents relating to the subject matter of this interrogatory.

Department's Response

- 11(d) Because of the delay in obtaining documents from HL&P and TU, the Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

Houston's Interrogatory

- 13 State the basis for, and provide all documents relating to, the Division's allegation that "This coordination [of operation and development] cannot be done independently of the two dominant Texas utilities, HL&P and TU, without incurring substantially increased cost, decreased reliability and an erosion of the smaller utilities' competitive capabilities" (p. 7), and in so doing:

. . .

- (b) identify (1) each product and geographic market which either TU or Houston, or both, dominate; (2) the type and extent of competition in each such market; and (3) the market share, in percentage terms, of every utility in each such market;

Department's Response

- 13(b) The Department cannot respond to this request with any degree of specificity until it has progressed further into the discovery process. Since the Department only recently received the documents it has selected from HL&P and has not yet received the documents selected from TU, it has neither had an adequate opportunity to review those documents nor to formulate any follow-up discovery request. The Department will respond to this request as soon as it is in a position to do so.

Houston's Interrogatory

- 13(d) state whether the Division has evidence that HL&P or TU has refused to coordinate with such smaller utilities, and if so, set forth each specific fact related to such evidence and state whether these facts have occurred since October, 1974;

Department's Response

- 13(d) At this time, the Department's allegation is limited to HL&P's and TU's refusal to coordinate in connection with the May, 1976 disconnection and subsequent refusal to reestablish interconnection even under FPC jurisdictional exemptions. As noted in our response to Interrogatory 13(d), we have not had an adequate opportunity to review the documents selected from the files of HL&P and TU.

Houston's Interrogatory

- 13(f) identify all the utilities referred to as "smaller utilities," and identify (1) each product and geographic market in which each such smaller utility has "competitive capabilities," (2) describe the type and extent of such alleged competition in each such market, (3) state the market share of every utility in each such market, (4) state the specific conduct of HL&P which has eroded the competitive capabilities of the smaller utilities in each of those markets, and (5) state whether, in the Department's view, HL&P's conduct was motivated by anticompetitive purposes, and if so, state the facts which support such a contention.

Department's Response

- 13(f) The "smaller utilities" referred to in the Department's letter of advice dated February 21, 1978, are all utilities in or around the area served by HL&P and TU of a lesser size than HL&P and TU. With respect to Interrogatory 13(f)(4), the disconnection in May of 1976 by HL&P and TU from its competitors eroded the latter's competitive capabilities as evidenced by their decreased reliability, increased operating costs, and inability to conduct future planning of generation addition as a result of the then uncertainty as to what interconnections may be available to them in the future. The Department cannot otherwise respond to request items 13(f)(1)-(5) until it has progressed further into the discovery process.

Houston's Interrogatory

- 14(a) With reference to the Division's statement that Houston is a "dominant Texas utility" (p. 7), is it the Division's contention that Houston possesses monopoly power or some other degree of market power relevant to this proceeding?

- 14(b) If so, (1) identify each product and geographic market in which Houston has such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) identify every action taken by Houston to acquire or maintain its alleged monopoly power, (5) identify each abuse of each instance of such power by Houston, and (6) explain whether there has been any change in such conduct since October, 1974.
- (c) Provide all documents which relate to the subject matter of this interrogatory.

Department's Response

- 14(a) Yes.
- (b) See response to Interrogatories 13(d) and (f).

Houston's Interrogatory

- 15(a) With reference to the Division's allegation that TU is a "dominant Texas utility" (p. 7), does the Division contend that TU possesses monopoly power or some other degree of market power relevant to this proceeding?
- (b) If so, (1) identify each product and geographic market in which TU has such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) identify every action taken by TU to acquire or maintain its alleged monopoly power, (5) identify each abuse of each instance of such power by TU, and (6) explain whether there has been any change in such conduct since January, 1974.
- (c) Provide all documents which relate to the subject matter of this interrogatory.

Department's Response

- 15(a) Yes.
- (b) See response to Interrogatories 13(d) and (f).

Houston's Interrogatory

- 16(a) Notwithstanding the answers to Interrogatories 14 and 15, does the Division contend that Houston and TU jointly possess monopoly power or some other degree of market power in any market relevant to this proceeding?

- 16(b) If so, (1) identify each product and geographic market in which Houston and TU jointly possess such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) state the basis upon which the Division contends the market shares of Houston and TU may be aggregated to find joint monopoly power, (5) identify every action taken by Houston or TU to acquire or maintain each such instance of such joint power, (6) identify each abuse by Houston or TU of each such instance of such joint power, and (7) identify any change in such conduct since January, 1974.
- (c) Provide all documents which relate to the subject matter of this interrogatory.

Department's Response

- 16(a) Yes.
- (b) See response to Interrogatories 13(d) and (f). With respect to Interrogatory 16(b)(4), the basis upon which the Department contends that the market shares of HL&P and TU May [sic] be aggregated to find joint monopoly power are Section 1 of the Sherman Act, Section 2 of the Sherman Act, and Section 5 of the Federal Trade Commission Act.

Houston's Interrogatory

- 20(a) Does the Division have any evidence of an agreement between Houston and TU that existed prior to May 4, 1976, that provides that they would disconnect from any other member of TIS which enters interstate operation?
- (b) If so, (1) specify the exact details of such an agreement; (2) identify the persons involved in making the agreement; (3) provide the date of the agreement; and (4) provide the form of the agreement (e.g., written or oral, in person or by telephone), and, if oral, identify all persons present.
- (c) Provide all documents which relate to the subject matter of this interrogatory.

Department's Response

- 20(a) See response to interrogatory No. 1. 1534 356
- (b) The Department has not yet had the opportunity to complete its review of discovery materials to the extent necessary to respond to this part of the interrogatory. Document review and investigation are continuing.

Houston's Interrogatory

- 23(a) Identify each instance of alleged injury to actual competition from either the alleged "intrastate only" agreement, or from any unilateral decision or policy by Houston to operate on an intrastate basis, including identification of (1) each injured person; (2) the relevant product and geographic market; (3) the type and extent of competition in each such market; (4) the market share of every utility in each such market; and (5) the specific cause and nature of each such injury.

Department's Response

- 23(a) Due to the delay on the part of HL&P and TU in providing the Department with the documents selected by the Department from the discovery material in the private antitrust action, the Department has been unable to complete a timely review of that material and initiate its own follow-up discovery. As a result, the Department is not in a position to give full and complete responses to Interrogatory 23 at this time.

Actual competition was injured during the approximately one year period that HL&P and TU were refusing to interconnect with those utilities with whom it had historically maintained interconnections. The injury was manifested by reduced reliability and increased cost as a result of the disconnection and refusal to reestablish interconnections. Those utilities effected were CP&L, WTU, Lower Colorado River Authority, City of Austin, Public Utility Board of San Antonio, STEC/MEC, Brazos Electric Membership Cooperative, and the members of the TMPP.

Houston's Interrogatory

- 23(b) State the basis for your answer, and provide all documents which relate to the subject matter of this interrogatory.

Department's Response

- 23(b) The basis for the Department's answer to Interrogatory 23(a) are representations made by counsel and officials of CP&L and Central and Southwest Corporation, the pleadings filed, and the record compiled, in Docket No. 14 before the Texas Public Utility Commission, communications with counsel for Brazos Electric Membership Cooperative, and the City Manager of Bryan, Texas.

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Houston's Interrogatory

25(a) Identify each of "the areas in which HL&P and TU face competition or could reasonably compete" (p. 9), including but not limited to:

- (1) each relevant product and geographic market;
- (2) the nature and extent of competition in each market;
- (3) each actual competitor (including, if relevant, Houston and TU) in each market, and describe such competitor's activities in the market;
- (4) each potential competitor (including, if relevant, Houston and TU) in each market, and describe such competitor's potential activities in the market; and
- (5) the market share of every utility in each such market.

. . .

(c) State the basis for your answer, and provide all documents which relate to the subject matter of this interrogatory.

Department's Response

25(a) HL&P and TU face competition or could reasonably compete in any area within the geographic area in which they presently have facilities or in any area within which they could economically construct facilities, absent legal or institutional restraints on their ability to so extend their system.

Interrogatories 25(a) (1)-(5) are, in the Department's view, redundant with Interrogatories 23 and 24 and were answered to the extent possible in our responses to those interrogatories, given the present status of discovery.

Houston's Interrogatory

26(b) Identify each serious attempt by a member of ERCOT to establish interstate connections, including (1) date; (2) persons making the attempt; (3) actions taken which constitute the attempt; (4) type and purpose of the interstate connection attempted; and (5) causes of failure of the attempt.

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- 26(c) Identify each serious attempt by a member of the SWPP to establish interconnections with a member of ERCOT, including (1) date; (2) persons making the attempt; (3) actions taken which constitute the attempt; (4) type and purpose of the interconnection attempted; and (5) causes of failure of the attempt.
- (e) Provide all documents which relate to the subject matter of this interrogatory.

Department's Response

- 26(b) The Department cannot respond to these interrogatories given the current status of discovery caused by the delay of HL&P and TU in providing the Department with discovery material from the private antitrust action.

Houston's Interrogatory

32 State the basis for, and provide all documents relating to, the Division's allegation that "a number of the utilities in Texas, including competitors of HL&P and TU, have a surplus of generating capacity" (p. 9), and in so doing:

- (b) for each such competitor of HL&P or TU with excess capacity, (1) identify the utility; (2) state the product and geographic market in which it competes with Houston and/or TU; (3) state the type and extent of competition in each such market; and (4) state the market share of every utility in each such market;

Department's Response

- 32(b) This request is redundant with Interrogatories 13(b), 13(f), 14(b), 15(b), and 16(b), and has been answered by the Department, to the extent it is able to do so given the present status of discovery, in its responses to those interrogatories.

Houston's Interrogatory

- 32(c) identify each such surplus of generating capacity by owner, quantitative measure of the surplus, the cost at which surplus capacity could be sold and period of time over which the surplus will or is expected to exist;
- (d) state whether and on what terms fuel supplies are available to generate power from the "surplus" capacity identified in this response;

1534 359

Department's Response

- 32(c) The Department does not have the facts in its possession  
(d) at this time to enable it to answer these interrogatories.

Houston's Interrogatory

- 34(b) Specify the facts that support the allegation that "additional amounts of power" may "become available" from SPA and in so doing specify the quantity of such power, the cost of such power, and the time period for which it will be available and explain why this power could not be sold to municipal and cooperative systems in Texas.

Department's Response

- 34(b) An amount of power equal to 170 mw may be made available to preference customers of SPA when an existing contract between SPA and Reynolds Metals expires in 1979. The Department is not aware at this time of the time period for which the power may be made available. The request for an explanation of why this power could not be sold to municipal and cooperative systems in Texas is redundant with Interrogatory 34(a)(1).

Houston's Interrogatory

- 34(c) Identify and describe the circumstances surrounding each instance in which a municipal or cooperative system in Texas has requested, expressed interest in or otherwise considered the possibility of receiving power from SPA (if it does not now receive such power) or of increasing its share of such power (if it now receives such power).

Department's Response

- 34(c) The Department cannot respond to this request until it has substantially completed discovery.

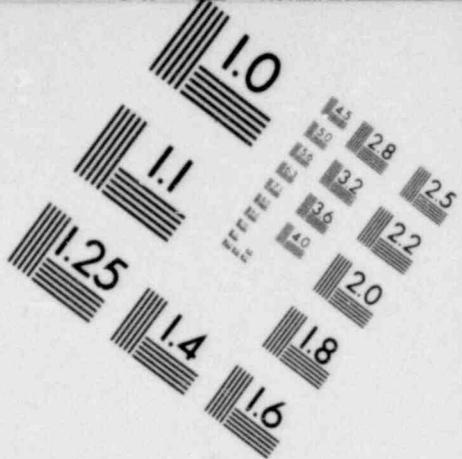
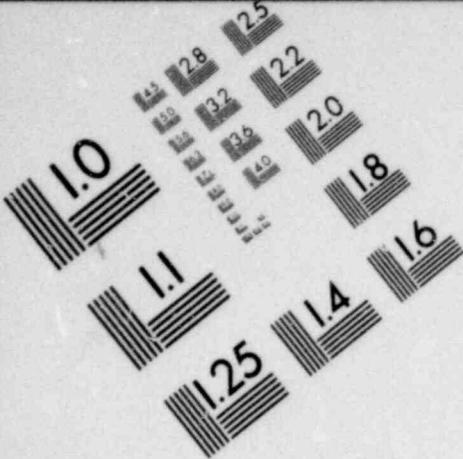
Houston's Interrogatory

- 34(f) Describe the sources of such "deficiency power" now available to SPA and terms on which it is available.  
(j) Provide all documents relating to the subject matter of this interrogatory.

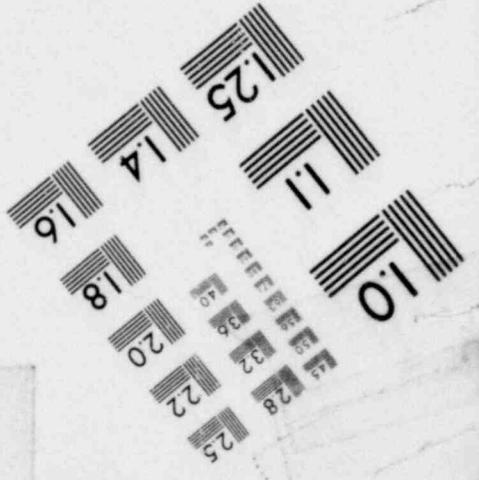
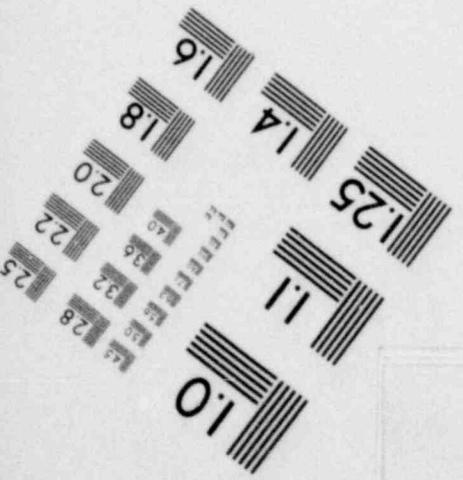
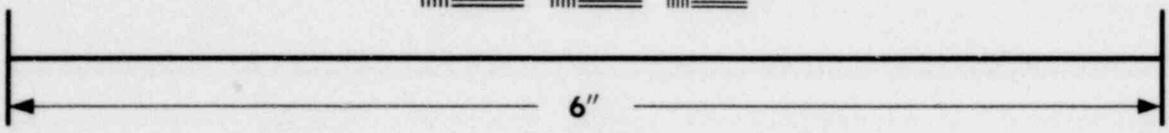
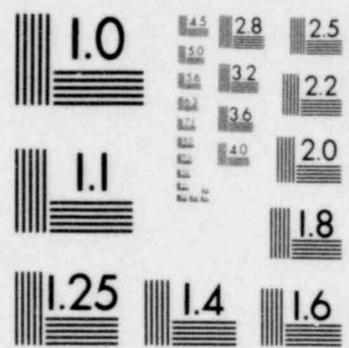
Department's Response

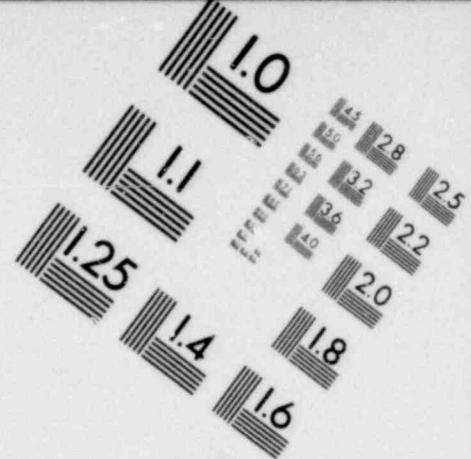
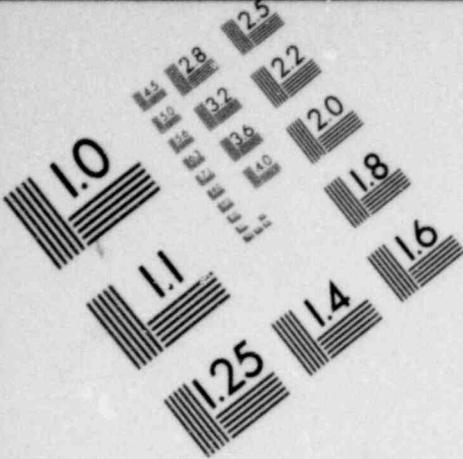
- 34(f) The Department is not aware at this time of the present sources of deficiency power now available to SPA nor of the terms on which it is available.

1534 360

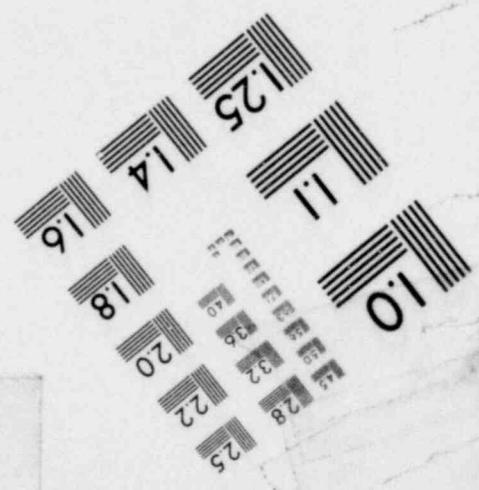
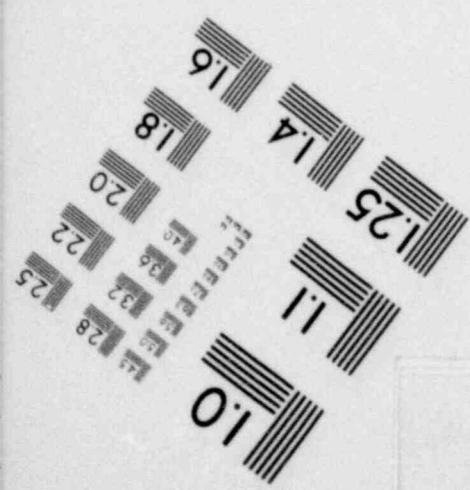
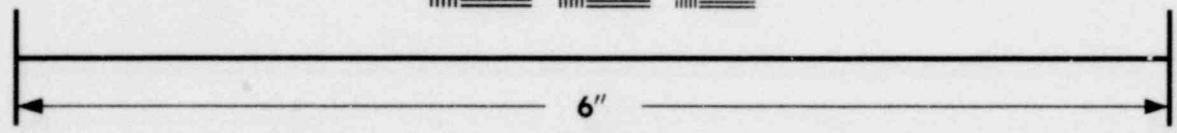
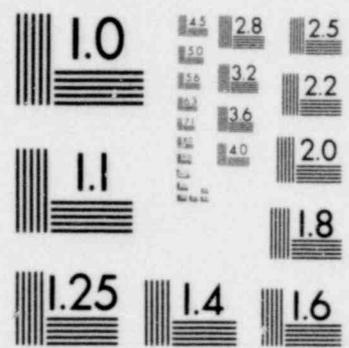


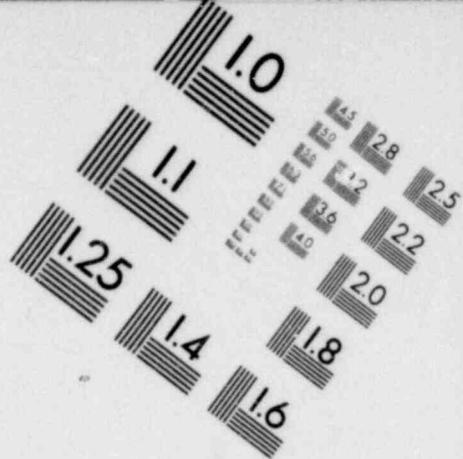
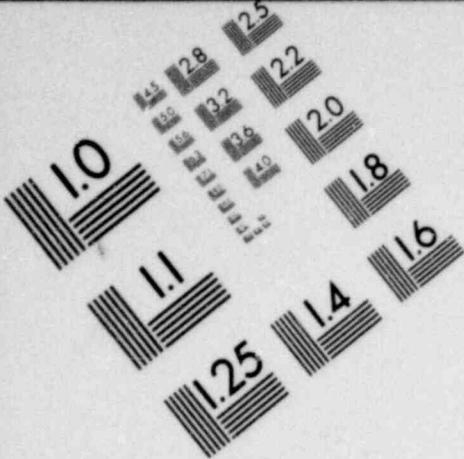
**IMAGE EVALUATION  
TEST TARGET (MT-3)**



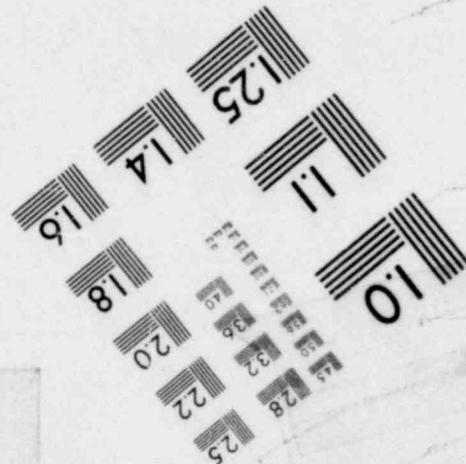
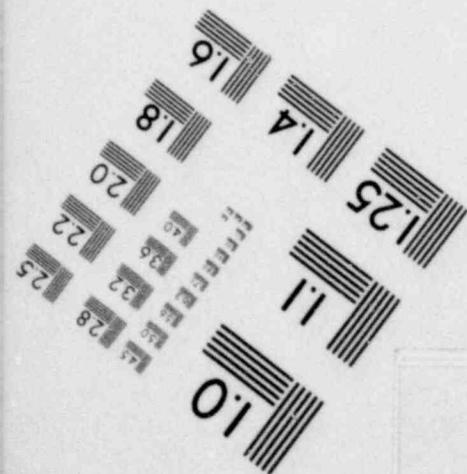
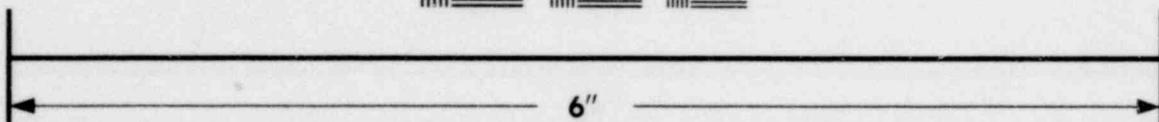
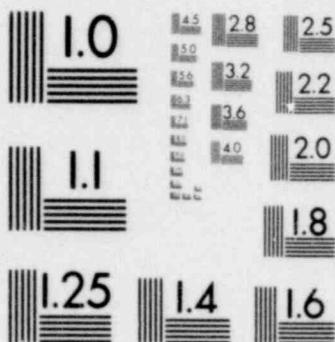


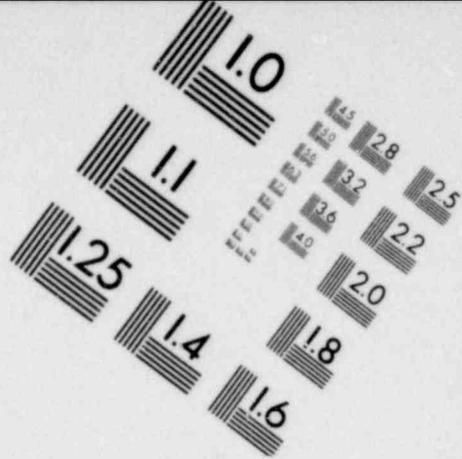
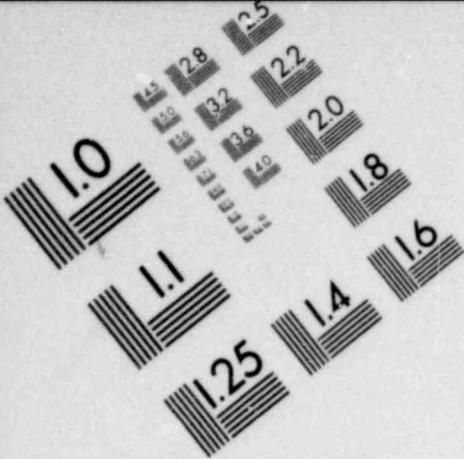
# IMAGE EVALUATION TEST TARGET (MT-3)



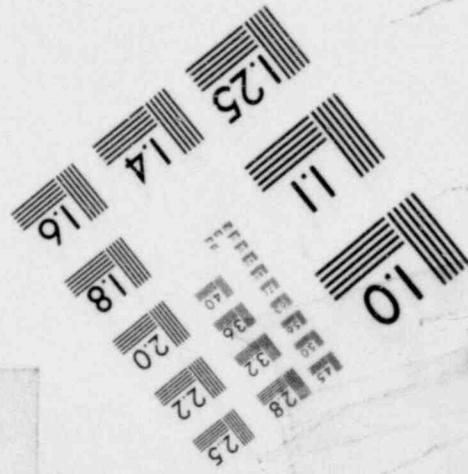
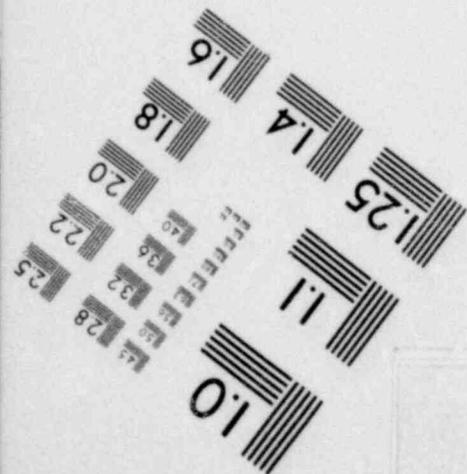
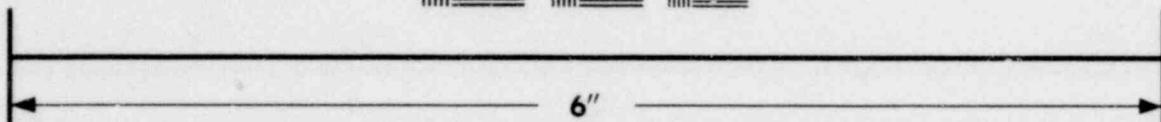
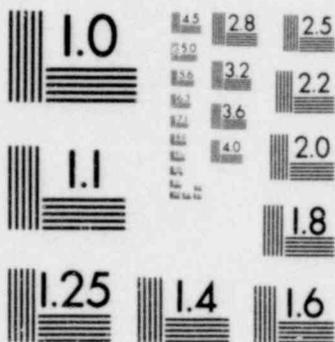


**IMAGE EVALUATION  
TEST TARGET (MT-3)**





**IMAGE EVALUATION  
TEST TARGET (MT-3)**



## APPENDIX B

Houston's Interrogatories to the NRC Staff and corresponding responses of the Staff.

### Houston's Interrogatory

5. (a) Does the Staff contend that Houston has denied any other utility access to or participation in the South Texas Project or any other nuclear plant?
- (b) If so, describe the circumstances surrounding each such denial, including: (1) identification of the requesting utility, (2) name and title of the person making the request, (3) form of request (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the request was made, (4) date of request, (5) person to whom request was addressed, (6) name of person who responded to request, (7) form of response (i.e., written or oral, in person or by telephone) and, if oral, a list of all persons present at the time the response was given, (8) person to whom the response was addressed, and (9) the date of response.
- (c) State whether the Staff has knowledge that a utility has considered requesting Houston to grant access to or participation in the South Texas Project but did not communicate such request to Houston. If so, identify each such utility and the circumstances surrounding such consideration.
- (d) Provide all documents relevant to this interrogatory.

### Staff's Response

5. The Staff is not able to answer this interrogatory in detail at this time. However, the Staff is concerned about the effects of the intra-state only policy on the planning opportunities of small utilities who, because of the economies of scale inherent in nuclear generation, have by themselves, no opportunity to participate.

Any relevant documents are provided in Appendix A.

### Houston's Interrogatory

6. (a) Does the Staff contend that the South Texas Project is in any way essential or uniquely advantageous to a utility which is a member of the Southwest Power Pool?
- (b) If so, (1) set forth the facts upon which the Staff relies to support this contention; (2) explain why participation in STP is more essential than participation in the nuclear generating facilities which are proposed, under construction, or in operation within the Southwest Power Pool; and (3) provide all documents relevant to this interrogatory.

Staff's Response

6. The Staff has considered such a theory in light of current and future restrictions on other baseload fuels in this area. The Staff will formally respond to this request as it completes its discovery efforts. Any documents relevant to this request have been provided in Appendix "A".

Houston's Interrogatory

7. (a) Does the Staff contend that Houston possesses monopoly power or some other degree of market power relevant to this proceeding?
- (b) If so, (1) identify each product and geographic market in which Houston has such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) identify every action taken by Houston to acquire or maintain its alleged monopoly power, (5) identify each abuse of each instance of such power by Houston, and (6) identify each change in such conduct since October 1974.
- (c) Provide all documents relevant to this interrogatory.

Staff's Response

7. (a) Yes.
- (b) The response to this subpart requires an economic analysis which the Staff has not, as yet, obtained. As this information becomes available to us, we shall undertake to more fully respond to this interrogatory.

Houston's Interrogatory

8. (a) Does the Staff contend that TU possesses monopoly power or some other degree of market power relevant to this proceeding?
- (b) If so, (1) identify each product and geographic market in which TU has such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) identify every action taken by TU to acquire or maintain its alleged monopoly power, (5) identify each abuse of each instance of such power by TU, and (6) identify each change in such conduct since January 1974.
- (c) Provide all documents relevant to this interrogatory.

- 8. (a) Yes.
- (b) See answer to 7. (b) above.

Houston's Interrogatory

- 9. (a) Notwithstanding the answers to Interrogatories 7 and 8, does the Staff contend that Houston and TU jointly possess monopoly power or some other degree of market power relevant to this proceeding?
- (b) If so, (1) identify each product and geographic market in which Houston and TU jointly possess such power, (2) describe the type and extent of competition in each such identified market, (3) state the market share of every utility in each such market, (4) state the basis upon which the Staff contends the market shares of Houston and TU may be aggregated to find joint monopoly power, (5) identify every action taken by Houston or TU to acquire or maintain each such instance of such joint power, (6) identify each abuse by Houston or TU of each such instance of such joint power, and (7) identify each change in such conduct since January, 1974.
- (c) Provide all documents relevant to this interrogatory.

Staff's Response

- 9. (a) Yes.
- (b) See answer to 7. (b) above.

Houston's Interrogatory

- 13. (a) Identify each instance of alleged injury to actual competition from any unilateral decision or policy by Houston to operate in the intrastate mode, including identification of (1) each injured person; (2) the relevant product and geographic market; (3) the type and extent of competition in each such market; (4) the market share of every utility in each such market; and (5) the specific cause and nature of each such injury.
- (b) Provide a basis for your answer, and provide all documents relevant to this interrogatory.

Staff's Response

1535 003

- 13. (a) The Staff cannot fully respond to this interrogatory for the reasons stated in response to Interrogatory 7. (b). As of this point in time, the Staff generally agrees with the assessment of the Department of Justice in its answer to Houston's Interrogatory No. 23, and the Staff notes the May 17, 1977 letter from the President of Gulf States Utilities Co. to the Texas Public Utilities Commission in its Docket 14 proceeding. To the extent that Houston's refusal to deal with interstate utilities has precluded a GSU interconnection with a TIS entity, which would save GSU an estimated \$11 million in construction costs alone according to Mr. Lee, denial of such an interconnection

has harmed a substantial actual competitor of HL&P, and thus actual competition.

Other forms of harm to actual competition including that of Gulf States include, but are not limited to the following: impossibility of access to the South Texas Project, impossibility for TIS entities to consider participation in the now cancelled Blue Hills nuclear units, inability of STEC/MEC to plan sales of excess energy from its San Miguel coal units and the inability of various members of STIS to even consider the options for power sales, purchases, and exchanges with non-TIS entities.

The Staff will update this response at a later date.

- (b) Relevant documents have been provided in Appendix A.

#### Houston's Interrogatory

14. If the Staff contends that Houston was or is party to an "intrastate only" agreement:

(a) Identify each instance of alleged injury to actual competition from the alleged "intrastate only" agreement, including identification of (1) each injured person; (2) the relevant product and geographic market; (3) the type and extent of competition in each such market; (4) the market share of every utility in each such market, and (5) the specific cause and nature of each such injury.

(b) Provide a basis for your answer, and provide all documents relevant to this interrogatory.

#### Staff's Response

14. Those portions of this interrogatory which require an economic analysis or which would necessarily be based upon conclusions drawn from such an analysis will be deferred pending receipt and evaluation of such an analysis as described in response to interrogatory 7. (b).

In addition to the instances of harm to actual competition listed as examples in its answer to the preceding question, Staff believes that HL&P's agreement with TU to refuse to deal with interstate utilities has unduly limited consideration of power supply alternatives for ERCOT members and surrounding entities.

1535 004.

Some examples, which will be updated in the future, include the inability of Western Farmer's Electric Cooperative, Inc. to consider purchase of power from TU or interconnection with Brazos Electric Cooperative, inability of the interstate portions of Tex-La Cooperative to coordinate their operations with their intrastate counterparts, inability of Southwestern Power Administration to coordinate its Texas operations with those outside of Texas, all to the detriment of these entities and to the detriment of actual competition.

Houston's Interrogatory

15. (a) Identify each instance of alleged injury to potential competition from any unilateral decision or policy by Houston to operate in the intrastate mode, including identification of (1) each injured person; (2) the relevant product and geographic market; (3) the type and extent of competition in each such market; (4) the market share of every utility in each such market; and (5) the specific cause and nature of each such injury.
- (b) Provide a basis for your answer, and provide all documents relevant to this interrogatory.

Staff's Response

15. The Staff objects to this interrogatory on the ground that it is predicated upon the false assumption that Houston's refusal to deal with interstate utilities is unilateral.

As to the economic conclusions requested see response to interrogatory 7. (b). Any relevant documents, however, have been provided in Appendix A.

Houston's Interrogatory

16. If the Staff contends that Houston was or is party to an "intrastate only" agreement:
- (a) Identify each instance of alleged injury to potential competition from the alleged "intrastate only" agreement, including identification of (1) each injured person; (2) the relevant product and geographic market; (3) the type and extent of competition in each such market; (4) the market share of every utility in each such market, and (5) the specific cause and nature of each such injury.
- (b) Provide a basis for your answer, and provide all documents relevant to this interrogatory.

Staff's Response

16. See response to interrogatory 7. (b). Any relevant documents, however, have been provided in Appendix A.

1535 005

Houston's Interrogatory

17. (a) Identify each of the areas in which HL&P and/or TU are in competition with other utilities, including but not limited to:

- (1) each relevant product and geographic market;
- (2) the nature and extent of competition in each market;
- (3) identity of each actual competitor (including, if relevant, Houston and TU) in each market, and a description of such competitor's activities in the market;
- (4) identity of each potential competitor (including, if relevant, Houston and TU) in each market, and a description of such competitor's potential activities in the market; and
- (5) the market share of every utility in each such market.

(b) Provide a basis for your answer, and provide all documents relevant to this interrogatory.

Staff's Response

17. See response to interrogatory 7. (b).

Houston's Interrogatory

20. Does the Staff contend that there is the need and opportunity for coordination between interstate and intrastate utilities? If so, explain how intrastate utilities can coordinate or cooperate with interstate utilities and still maintain their intrastate status under the legal standards of Florida Power & Light Company v. FPC, 404 U.S. 453, 92 S.Ct. 637 (1972).

Staff's Response

20. The Staff has not as of this date completed its analysis of issues pertinent to this interrogatory. A more detailed response will be forthcoming.

Houston's Interrogatory

23. (a) Does the Staff contend that the City of Austin is responsible for the creation or maintenance of a situation inconsistent with the antitrust laws, within the meaning of §105(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2135(c), in connection with the South Texas Project?

(b) If so, state the basis for your answer, and provide all documents relevant to this interrogatory.

24. (a) Does the Staff contend that the City of San Antonio is responsible for the creation or maintenance of a situation inconsistent with the antitrust laws, within the meaning of §105(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2135(c), in connection with the South Texas Project?
- (b) If so, state the basis for your answer, and provide all documents relevant to this interrogatory.

Staff's Response

- 23-24. The Staff's analysis of the posture under the antitrust laws and the issues in controversy in this proceeding of Austin and San Antonio is continuing. The Staff will complete this response after completion of this analysis including initiation of pertinent discovery.

Houston's Interrogatory

25. (a) Does the Staff contend that CP&L is responsible for the creation or maintenance of a situation inconsistent with the antitrust laws, within the meaning of §105(c) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2135(c), in connection with the South Texas Project?
- (b) If so, state the basis for your answer, and provide all documents relevant to this interrogatory.

Staff's Response

25. The Staff's investigation into this question (which necessarily includes an evaluation of the claims of the City of Brownsville) is continuing and will be supplemented at a later date.

However, all relevant documents to date have been provided in Appendix B.

Houston's Interrogatory

26. Describe each condition to Houston's license which the Staff seeks or will seek if it is ultimately determined that the granting of the license to Houston would create or maintain a situation inconsistent with the antitrust laws.

Staff's Response

26. The Staff's delineation of appropriate relief in this antitrust proceeding relative to HL&P must await further

analysis of the situation which is or may be inconsistent with the antitrust laws. At this point in time, the Staff is considering license conditions which would be similar to (1) those discussed with HL&P immediately prior to the Department's advice letter of February 28, 1978 and/or (2) those contained in the intervention petition filed in this proceeding by Central Power & Light Company.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

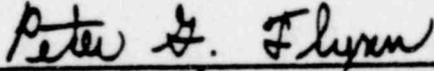
In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER	)	Docket Nos. 50-498A
COMPANY, et al.	)	50-499A
	)	
(South Texas Project,	)	
Units 1 and 2)	)	
	)	
TEXAS UTILITIES GENERATING	)	Docket Nos. 50-445A
COMPANY, ET AL.	)	50-446A
	)	
(Comanche Peak Steam Electric	)	
Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the forgoing

MOTION OF HOUSTON LIGHTING & POWER  
COMPANY TO COMPEL THE DEPARTMENT OF  
JUSTICE AND THE NRC STAFF TO RESPOND  
TO HOUSTON'S FIRST SET OF INTERROGATORIES  
AND REQUESTS FOR PRODUCTION OF DOCUMENTS

dated November 30, 1979 were served upon the following persons,  
by hand \*, or by deposit in the United States Mail, first  
class postage prepaid, this 30th day of November 1979.

---

Peter G. Flynn

Dated: November 30, 1979

1535 009

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