

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of

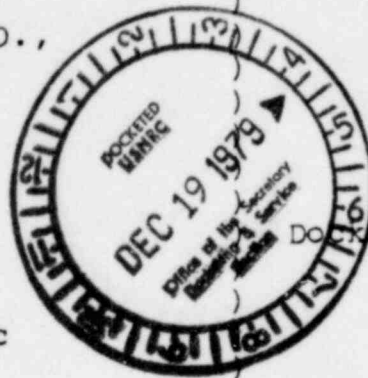
HOUSTON LIGHTING AND POWER CO.,
et al.

(South Texas Project, Units
1 and 2)

TEXAS UTILITIES GENERATING
COMPANY, et al.

(Comanche Peak Steam Electric
Station, Units 1 and 2)

) Docket Nos. 50-498A
50-499A



) Docket Nos. 50-445A
50-446A

RESPONSE OF THE PUBLIC UTILITIES BOARD
OF THE CITY OF BROWNSVILLE, TEXAS
TO TEXAS UTILITIES' MOTION
FOR MODIFIED PROTECTIVE ORDER

Counsel for Texas Utilities Generating Company ("TU") advised us yesterday that it had inadvertently filed by mail a proposed protective order that differs materially from the terms of the draft order previously agreed to between TU and the Public Utilities Board of the City of Brownsville, Texas ("Brownsville") on treatment of TU's confidential documents; and that the filing inadvertently represented to the Board that Brownsville did not oppose these changes. Brownsville in fact had not agreed to the proposed order, and indeed objects to several of the changes proposed by TU. (We have not yet received the proposed order as mailed and are working from our first and only notice of TU's proposed changes, a telecopy draft we received Friday, December 14, 1979.)

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The agreement which we believed we had reached with TU was negotiated, at TU's request, over a period of months, after the Board issued an order (March 23, 1979) overruling TU's objections to Brownsville's document requests and requiring TU to produce responsive documents without any mention of a protective order.

Susan White, a paralegal with Spiegel & McDiarmid, pursuant to authorization by and under the supervision of attorneys with this firm, discussed this matter with counsel for TU over a number of months. Counsel for TU has now suggested that the agreement which he seems to concede he had made is somehow vitiated because it was negotiated, on behalf of Brownsville, primarily by a paralegal rather than by an attorney. Brownsville had been under the impression that an agreement was an agreement. TU also raised no objection to our November and December discovery status reports (dated November 8, 1979 and December 5, 1979) which mentioned the ongoing protective order negotiations and the resulting agreement.

Brownsville does not seek to put before the Board at this time substantive argument on its disagreements with TU's current draft of its proposed changes, since we are continuing to attempt to resolve our differences and indeed,

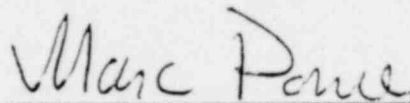
are not yet in receipt of this current proposal. Apparently, however, TU no longer finds the terms of its agreement acceptable.

We understand part of the problem to be that TU has discovered its agreement with Brownsville conflicts with the terms of agreements it has made with certain fuel suppliers to protect the "confidentiality" of its fuel supply arrangements. Brownsville is yet again willing to consider reasonable changes. Considering that the issue of confidentiality was under discussion from April through November, 1979, and was specifically limited to fuel contracts, however, Brownsville believes that it is justified in observing that it would have expected TU to discover the conflict before now.

Until the last five days, it had been our understanding that TU intended to move the Board for the protective order agreed upon, but that in the meantime discovery could go forward in conformity with the agreement. Accordingly, Brownsville conducted its discovery at the TU companies during the end of November, under the understanding that confidential documents would be treated in accordance with the agreement. None of the requested documents (including documents asserted to contain confidential information) have been received as yet. In its December 5, 1979 monthly status report concerning progress in discovery, Brownsville noted it had conducted discovery during November and appended a copy of the draft protective order.

We understand counsel for TU contacted Mr. Wolfe of this Board by telephone yesterday afternoon at our request, informed him that the filing of the proposed protective order was an error, and requested that the Board not take action on it at this time. Brownsville respectfully joins in that request.

Respectfully submitted,



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December 19, 1979

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