



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 21, 1979

Peter G. Flynn, Esq.
Lowenstein, Newman, Reis, Axelrad
& Toll
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Houston Lighting & Power Company,
South Texas Project, Unit Nos. 1
& 2, NRC Docket Nos. 50-498A,
50-499A

Dear Mr. Flynn:

This is in response to your letter addressed to me of December 20, 1979, concerning (i) service of hand-delivered pleadings on the Staff by counsel for Houston Lighting & Power Company, and (ii) the circumstances surrounding service of Houston's motion to compel discovery of the Staff, dated November 30, 1979.

The latest problem that the Staff has incurred regarding service of documents occurred on December 17th-18th of this week. You will recall that on December 13, 1979 you and I agreed that Houston would produce on December 17, 1979 additional documents responsive to the Staff subpoena of Mr. Gerber. We agreed that the Staff would send a messenger to your offices at noon on December 17th and pick up the designated documents. An NRC messenger arrived at your offices at 12:15 p.m. on December 17, 1979. He called me to advise that not only were the documents not available for pickup, but he was told there was no one there who knew anything about the documents. At my instruction, the NRC messenger again contacted by telephone and visited your office after lunch at approximately 2:00 p.m., with the same result.

At about 2:30 p.m. on that day, I was called by a paralegal employed by Lowenstein, Newman, Reis, et al. stating that there had been a mixup on Houston's part, but that the documents would be hand-delivered to Staff counsel's office that day. No documents were received that day. As the receipt stamp on the attached letter indicates, the documents were received at 3:00 p.m. the next day. Moreover, the mailing label for the package indicates the documents were never delivered to Staff counsel, but rather, were delivered to the Commission's H Street office. Finally, as you will note, a messenger address label was not used; the documents may have been inadvertently mailed to the H Street office.

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Your letter of December 20, 1979 also clearly raises the need for improving hand-delivery procedures on the Staff. If a service list indicates hand-delivery to Staff counsel, we suggest the following procedure:

1. Hand-delivery should be effected as far from the close of business on a given day as possible. The reference in your letter to what may have occurred between 4:50 p.m. and 5:00 p.m. on November 30, 1979 indicates that the delivery earlier in the day is much more desirable.
2. Upon arriving at 7735 Old Georgetown Road, the Maryland National Bank Building, the messenger should ask the lobby guard to telephone the office of the attorney receiving the package. Then, the attorney (or someone from his office) can meet the messenger at a designated place, and the package can be delivered.

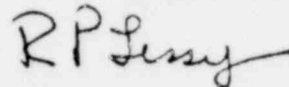
This procedure is generally used by others dealing with Staff counsel, and in my experience over the past five years, there have been few, if any problems in this regard.

Compare this process with the one utilized by Houston's messenger on Friday, November 30, 1979. The messenger apparently went directly to the ninth floor of the Maryland National Bank Building within ten minutes of the close of the business day. My office is on the eleventh floor. He presumably handed a package to someone at that time, but we really don't know who that individual was, or whether that person worked in the Office of the Executive Legal Director. We do know, as the attached stamp indicates, the "hand-delivered" pleading was not received by us until 9:10 a.m. on the following Tuesday morning. Following the procedure I have suggested may help to ameliorate the problem. I, moreover, object to the final sentence of page two of your letter, to the effect that "...the NRC employee who took possession of the Staff's copies of the motion failed to deliver them to counsel is not Houston's responsibility." On page one of your letter, you have indicated that you don't know whether the individual taking the package was an NRC employee. Filing a pleading by hand-delivery to the Staff on a Friday permits the minimum response time under the Commission's Rules of Practice. Accordingly, we do believe that if such a procedure is to be utilized as a matter of course, Houston does have the responsibility of making sure that the process it sets in motion is satisfactorily completed. This can be accomplished by a simple phone call to assure that service was made.

Finally, I disagree with the statement in your letter that "The Staff's implication that Houston deliberately delayed service in order to hinder the Staff's ability to prepare an adequate response is totally baseless." The Staff in its answer advised the Board of the facts of service, without

editorial comment. What we did imply in our answer, is that counsel for Houston ignored the Board's direction to informally resolve discovery disputes before filing formal motions to compel. The filing of the motion to compel, without prior notice, without any attempt at informal negotiations or mutually arrived at production or response schedules, totally ignores the Licensing Board's direction. Moreover, you do realize that the motion to compel "requested" a Staff response prior to the time allotted for such responses under the Commission's Rules of Practice, without a motion in support of such a request. Also the requested response date was on the same date as the filing date for the Staff's response to Houston's petition for directed certification of the collateral estoppel order.

Sincerely yours,



Roy P. Lessy, Jr.
Counsel for NRC Staff

cc: Service List

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December 17, 1979

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ROBERT LOWENSTEIN
JACK R. NEWMAN
HAROLD F. REIS
PAUL CE AXELRAD
DAVID R. TOLL
KATHLEEN H. SHEA
J. A. BOURNIGHT, JR.

E. GREGORY BARNES
MICHAEL A. BAUSER
DEBORAH L. BERNSTEIN
ALBERT V. CARR, JR.
ROBERT H. CULP
PETER G. FLYNN
WILLIAM J. FRANKLIN
FREDERIC S. GRAY
DOUGLAS G. GREEN

POOR ORIGINAL *

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

Dear Roy:

Pursuant to your request, I have enclosed copies of certain documents from the files of Abraham Gerber. A bill for copying services is also enclosed.

Sincerely,

Peter G. Flynn

Peter G. Flynn

cc: All Counsel of Record

Enclosures

PGF/tt

LAW OFFICES

LOWENSTEIN, NEWMAN, REIS, AXELRAD & TOLL
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WASHINGTON, D. C. 20036

TO
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Roy P. Lessy, Jr. Esquire
Michael B. Blume, Esquire
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

FIRST CLASS MAIL

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BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
 HOUSTON LIGHTING & POWER COMPANY,)
 et al.)
 (South Texas Project, Units 1)
 and 2))
 TEXAS UTILITIES GENERATING COMPANY)
 et al.)
 (Comanche Peak Steam Electric)
 Station, Units 1 and 2))

RECEIVED 4 11 9 10
 Docket Nos. 50-498A
 50-499A

Dockets Nos. 50-445A
 50-446A

POOR ORIGINAL

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.^{1/}

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

^{1/} 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.