

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	)	Docket Nos. 50-455A
COMPANY, 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 TO PRODUCE CERTAIN DRAFTS  
OF TESTIMONY PREPARED BY WILLIAM E. SCOTT  
AS THE BOARD ORDERED THE DEPARTMENT TO DO  
ON OCTOBER 23, 1979

This motion arises from the Department of Justice's ["Department"] refusal to produce certain draft testimony ordered produced to Houston Lighting & Power Company ["Houston"] by this Board on October 23, 1979, nearly three months ago. The testimony in question was prepared by the Department's designated expert engineering witness, William E. Scott, in connection with his expected testimony in the evidentiary hearing in this case. Houston moved to compel production of this testimony on September 16, 1979, the Department filed a memorandum in opposition, and the Board ordered production be made.<sup>1/</sup>

<sup>1/</sup>A detailed history of the matter appears in the Motion of Houston Lighting & Power Company to Compel Production by the Department of Justice of Certain Drafts of Testimony Prepared by William E. Scott, dated September 10, 1979 at 1-4.

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800 1300 587

Over the past several months, Houston has requested this testimony informally a number of times. Recently, Houston was advised by the Department that either the testimony or a pleading would be forthcoming the week of January 7, 1980. Neither event transpired.

However, on January 15, 1980, Houston was sent a letter wherein the Department states that it "presently does not anticipate that William E. Scott will testify as an expert witness" in this proceeding, and that therefore the Department will not produce his draft testimony. The Department further advises that Mr. Scott's status for now has been converted to a "non-testifying expert." The Department reserves the right, however, to re-designate Mr. Scott as a testifying expert at a later time, in which event it would then be willing to comply with the Board's Order. (Exhibit A, hereto.) Houston respectfully moves the Board to order that the Department comply with its Order of October 23, 1979, and produce the draft testimony now.

The Department must not be permitted to avoid compliance with the Board's order by its recent announcement that it does not "presently" intend to call Mr. Scott to testify at the hearing.

Already the Department has delayed for nearly three months its compliance with the Board's order. During that time, it has asserted absolutely no justification for its failure to comply. <sup>2/</sup> Apparently, during the nearly three months since the Board's order was issued,

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<sup>2/</sup> During Mr. Scott's deposition, counsel for the Department agreed to preserve the draft testimony "because the Board might very well rule that it could be turned over." Deposition Tr. at 358.

the Department has weighed the detrimental effect of complying with the order against the value of Mr. Scott's potential testimony. During this time Mr. Scott's name remained on the witness list, and the Board's order was simply flouted. Even now, Mr. Scott's name has been removed from the witness list in only a tentative fashion. The Department, in its letter of January 15, 1980, expressly reserved the right to call Mr. Scott as a witness.

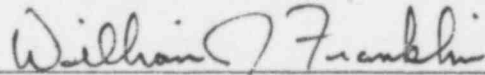
Assuming that Mr. Scott from now on remains in the role of a non-testifying expert, Houston has no interest in inquiring as to work he may perform in that capacity. However, the policy against disclosure of such work has no application to drafts of testimony prepared when Mr. Scott was a designated expert. In fact, the Department itself has taken the position, subsequently upheld by the Board, that the privilege from discovery as a non-testifying expert extends only to work done during the period of such employment. 3/

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3/ Answer to NRC Staff and the Department of Justice to Motion of TU to Quash Subpoena to Charles T. Main, Inc., dated October 18, 1979 at 2-3. The Board upheld the Department's position in an October 18, 1979 conference call.

For these reasons, the Board should again order the Department of Justice to produce immediately drafts of testimony prepared by its engineering expert and potential witness, William E. Scott.

Respectfully submitted,



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William J. Franklin  
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Dated: January 21, 1980

Exhibit A



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

15 JAN 1980

Address Reply to the  
Division Indicated  
and Refer to Initials and Number

DAK:SBC  
60-415-105

J. Gregory Copeland, Esquire  
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Re: Houston Lighting & Power Company, et al.,  
(South Texas Project, Units 1 & 2), Docket  
Nos. 50-498A and 50-499A and Texas Utilities  
Generating Company, et al., (Comanche Peak  
Steam Electric Station, Units 1 & 2) Docket  
Nos. 50-445A and 50-446A

Dear Mr. Copeland:

Please be advised that the Department of Justice ("Department") presently does not anticipate that William E. Scott will testify as an expert witness in the above captioned matters. Accordingly, the Department will not produce Mr. Scott's draft testimony or make him available for deposition in March. If the Department decides to re-designate Mr. Scott as an expert witness the Department will promptly notify all counsel, provide his draft testimony and any other materials responsive to the Board's Order on expert witnesses and provide counsel with an immediate opportunity to further depose Mr. Scott.

The Department anticipates that Mr. Scott will continue to assist the Department in its preparation for trial as a non-testifying expert, as his time permits.

The Department does, however, anticipate providing engineering testimony through individuals who have already been designated as expert witness in these proceedings.

Sincerely,

Susan Braden Cyphert  
Attorney  
Energy Section  
Antitrust Division

cc: Chairman Miller and  
Messers. Wolfe and Glaser  
Richard Weiner, Department of Energy  
William E. Scott, Department of Energy  
All counsel of record

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NUCLEAR REGULATORY COMMISSION

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COMPANY, et al.	)	50-499A
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Units 1 and 2)	)	
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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 foregoing Fourth Set of Interrogatories and Requests for Production of Documents from Houston Lighting & Power Company to Antitrust Division, U.S. Department of Justice and Motion of Houston Lighting & Power Company to Compel the Department of Justice to Produce Certain Drafts of Testimony Prepared by William E. Scott as the Board Ordered the Department to do on October 23, 1979 were served upon the following persons, by hand\*, or by deposit in the United States Mail, first class postage prepaid, this 21th day of January, 1980.

  
\_\_\_\_\_  
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