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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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

ORDER CONCERNING HOUSTON LIGHTING & POWER COMPANY'S MOTION FOR PROTECTIVE ORDER REGARDING DEPARTMENT'S DISCOVERY REQUEST
(March 6, 1979)

The Department of Justice (Department) served its First Set of Written Interrogatories upon Houston Lighting & Power Company (HL&P) on November 22, 1978. HL&P served its Objections and Answers on January 11, 1979, and on January 15, 1979, it served Objection and Motion for a Protective Order. The Department responded to both filings on February 6, 1979.

HL&P's first objection and motion for protective order relates to General Instruction No. 1 submitted by the Department. That instruction in part provides that if some of the requested documents have already been made available for the Department's inspection, they may be listed and described in lieu of being produced again. HL&P regards this as requiring it unreasonably to review again and sort out and list documents previously supplied. The problem results from the fact that many of these documents have been previously produced by HL&P in another civil

case (West Texas Utilities Company, et al. v. Texas Electric Service Company, et al., No. CA3-76-0633F [N.D. Texas, Dallas Division]) and we have directed that discovery provided in other proceedings be considered as material discovered in these consolidated proceedings.[1/] However, our effort to minimize duplicative discovery was not intended to prevent discovery which would otherwise be available to any party. Hence, we commend these parties for utilizing documents discovered previously by HL&P in the civil action. But that fact does not relieve HL&P from producing documents pertinent to specific discovery requests. It has the option either to produce all documents relevant to particular requests, or to list and describe those documents it regards as duplicative. In either event, a document and file review is required of HL&P, regardless of what it may have done for other parties in other proceedings. This objection is denied.

The next objection of HL&P relates to discovery requests directed jointly to it and another company. HL&P is only required to furnish such information as is available to it. 10 CFR §2.740b(a). There is no implication that HL&P is responsible for responding on behalf of some other unaffiliated corporation, which can respond on its own behalf. This objection is overruled.

[1/] South Texas Special Prehearing Conference Order, July 13, 1978, Tr. 6; Comanche Peak Prehearing Conference Order Regarding Issues, Discovery and Consolidation, December 5, 1978, Tr. 4.

The Department in Section C of its request asked that all documents withheld because of a claim of privilege be listed and the basis for asserted privilege described. HL&P objects to preparing a "new" list of privileged documents because it had previously provided a list of allegedly privileged documents in the other civil action. This objection is wide of the mark. Discovery in other proceedings is only the beginning of our inquiry, not the end. The fact that HL&P (or any other party) has been involved in other litigation, does not confer any immunity from or abridgement of normal discovery in this proceeding. It is only minimizing unnecessary duplication that we seek to accomplish, not foreclosing pertinent discovery to veterans of other legal wars.

However, the Department goes too far when it requests that all documents claimed to be privileged, shall be sealed and deposited with the Board. We do not wish to take physical possession of any documents, in camera or otherwise. If the matter of privilege is properly brought to our attention, we will rule upon such claims and we will then decide whether or not an in camera inspection of documents is necessary. Meanwhile, counsel and parties are directed to preserve intact all documents withheld under claim of privilege, pending future rulings of the Board.

HL&P objects to Interrogatory 5(b), which asks for the identification of all provisions in the South Texas participation agreement which limit participation to utilities engaged only in intrastate commerce.

It contends that it calls for legal conclusions, and as such calls for mental impressions, opinions and legal theories of its attorneys. The objection is overruled. The interrogatory is addressed to a party, not its attorneys. It is always proper to ask a party for its understanding of contractual provisions. The principles contained in Rule 33(b) of the Federal Rules of Civil Procedure are also applicable here by analogy, as to answers involving an opinion or contention that relates to fact, or the application of law to fact.

Objection is made to Interrogatory 13 on the ground that it is so vague and ambiguous that a meaningful answer is not possible. That interrogatory inquires whether the costs of regulation under FERC would be greater or less than under the Texas Public Utility Commission, and the basis for allegedly greater costs under the former. This is a fair question which goes to some of the business justifications advanced by HL&P and other for actions involving interstate versus intrastate operations and considerations. The objection is denied.

In substance, Interrogatory 19(a) asks whether HL&P had economic or engineering reasons for not reconnecting with utilities with which it had previously been interconnected, after an FPC order dated July 21, 1976, and if so what bases there were in fact underlying such reasons.

The objections relating to speculation, argument and conjecture are overruled, and HL&P should supply the requested facts.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller

Marshall E. Miller, Chairman

Dated at Bethesda, Maryland
this 6th day of March 1979.