UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

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

TUGCO'S MOTION TO QUASH SUBPOENAS
OR IN THE ALTERNATIVE TO QUASH TESTIMONIAL
SUBPOENAS AND TO MODIFY SCOPE AND RETURN
DATE OF DOCUMENTS SUBPOENA

Counsel for TUGCO received on Monday, October 15, 1979 copies of an application for issuance of subpoenas by the NRC Staff and the Department of Justice. The application, dated October 11, 1979, seeks subpoenas for testimony from R.C. Ender and A.E. Fitzgerald, both with Charles T. Main, Inc. of Boston, Massachusetts and document production by that firm's Keeper of the Records. The schedule to each subpoena refers to documents prepared for Texas Utilities relating to an evaluation of a study by a CSW consultant, Power Technologies, Inc. ("PTI") covering interconnections.

The Charles T. Main firm and the individual employees referred to in the application for subpoenas were retained by TUGCO in 1976 as nontestifying expert consultants to counsel.

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Essentially the scope of work was to analyze for TUGCO's counsel reports and evaluations prepared by PTI and others, and to provide related assistance to said counsel. The accuracy of such reports and evaluations has been, and is, a central issue in all related litigation and is expected to be a central issue in the instant proceeding.[1/] The consultancy arrangement with Charles T. Main has not been terminated. TUGCO counsel may well use the assistance of the Main firm as nontestifying experts in this case, including work done early in the consultancy.

To the best of our knowledge, all documents provided to Charles T. Main by counsel or TUGCO would be the same as already produced to the NRC and the Department by TUGCO, with the exception, of course, of privileged communications from (or at the direction of) TUGCO's counsel requesting assessment and analysis of the reports and evaluations for the use of counsel in litigation. Also privileged are all materials prepared by Charles T. Main. Requests by or for counsel, and resulting evaluations, are privileged under the Board's prior rulings with regard to attorney's trial preparation and the work product of nontestifying outside consultants.

1/ CSW has named as prospective witnesses herein the authors of certain of these reports: Dr. Wood (PTI), Messrs. Arey (Stone & Webster) and Bruggeman (CSW).

The Board's "Order Regarding Discovery Motions" of May 7, 1979 provides, in pertinent part:

> "(2) The Staff seeks the production of studies prepared by nontestifying outside consultants. The Board has ruled that the use by counsel of consultants not to be called as witnesses is protected as part of an attorney's trial preparation which is not subject to discovery (Tr. 185)."

For the foregoing reasons, TUGCO asserts its privilege in requests by or for counsel for analysis and evaluation of the PTI Report by Charles T. Main and its privilege in the resulting work in any form of Charles T. Main, Inc. Since this privilege appears to extend to precisely what the schedules to the subpoenas seek, the subpoenas should be quashed.

In the alternative, in view of the extremely short notice, (the application was received Monday, this is Wednesday, and the document production is scheduled for Friday) TUGCO requests quashing of the two subpoenas for testimony and modification of the return date for the documents subpoena to permit TUGCO counsel to review the files of Charles T. Main so as to segregate and withhold privileged information. It is unlikely, of course, that there will be any non-privileged information within the scope of the schedule to the subpoena. In view of the current schedule, it does not appear that that file review could be commenced and completed any sooner than approximately three - four weeks from today. Accordingly, our alternative is to request that the return date for the document

subpoena (the testimony subpoenas being quashed) be modified to a date not more than about 30 days from October 19th and that privileged information contained in any documentary material be excluded from the scope of the subpoenas.

Respectfully submitted,

Joseph B. Knotts, Jr.

Dated: October 17, 1979

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CERTIFICATE OF SERVICE

I hereby certify that copies of "TUGCO's Motion to Quash Subpoenas or in the Alternative to Quash Testimonial Subpoenas and to Modify Scope and Return Date of Documents Subpoena" dated October 17, 1979 in the above captioned matter, were served upon the following persons by deposit in the United States mail, first class postage prepaid, this 17th day of October, 1979 or by hand delivery to those indicated by an asterisk.

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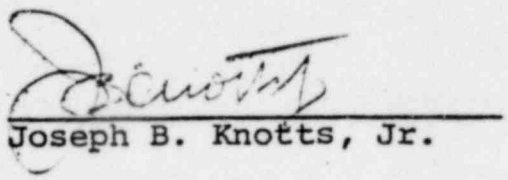

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