



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)	
)	
HOUSTON LIGHTING AND POWER COMPANY)	Docket Nos. 50-498A
THE CITY OF SAN ANTONIO)	50-499A
THE CITY OF AUSTIN and)	
CENTRAL POWER AND LIGHT COMPANY)	
)	
(South Texas Project, Units Nos.)	
1 and 2))	

MOTION BY RESPONDENT GULF STATES UTILITIES
COMPANY FOR A PROTECTIVE ORDER AND AN ORDER
SETTING CONDITIONS FOR COMPLIANCE WITH SUBPOENA

Preliminary Statement

On the application of counsel for the Public Utilities Board of the City of Brownsville, Texas ("Brownsville"), the Atomic Safety and Licensing Board ("Licensing Board") in this proceeding issued a subpoena dated February 26, 1979, to respondent Gulf States Utilities Company ("Gulf States"), which is not a party to the proceeding.^{1/} The subpoena to Gulf States required the production of a broad range of documents, pertaining to Gulf States' generation and transmission of power, its interconnections and projected interconnections with other utilities, and studies, reports and negotiations with other utilities for participation in nuclear and non-nuclear generating facilities. The subpoena and the instructions for compliance were some fifteen pages in length.

By letter dated March 7, 1979, Brownsville furnished Gulf States with a modified schedule, which it represented to contain

1/ Counsel for Gulf States has appeared specially.

2356 087

7906080141 m

those items listed in the subpoena of greatest interest to it and which it proposed "as a means of accommodation."^{2/}

Based upon this proposal and subsequent representations of counsel for Brownsville that the modified schedule constituted Brownsville's true demand for documents, Gulf States has produced for inspection and copying the documents requested in the modified schedule.

Nonetheless, production of the documents requested in the even more "limited" schedule has required Gulf States to expend hundreds of man-hours in the compilation and review of potentially relevant materials. Sound and equitable principles of law require that Brownsville, as the party requesting issuance of the Licensing Board's subpoena, rather than Gulf States, a disinterested third party, bear the costs and expenses incident to production of the demanded documents. Gulf States wishes to comply fully with the subpoena demand and to cooperate with the parties and the Licensing Board in the pending proceeding.

Accordingly, Gulf States asks only that a protective order be entered pursuant to 10 C.F.R. §2.740(c) to safeguard the confidentiality of certain business information under standard provisions customarily utilized by Licensing Boards, and to protect against disclosure altogether a small number of documents pertaining to attorney/client communications and Gulf

^{2/} A copy of the March 5 letter and modified schedule is attached.

States' ongoing negotiations with another electric utility cooperative. Also, Gulf States requests that all production be conditioned, pursuant to 10 C.F.R. §2.720(f), upon reimbursement to Gulf States for its costs and expenses in rendering full compliance.

Argument

1. Gulf States Should be Reimbursed for Costs and Expenses in Compiling the Subpoenaed Documents. The provisions of 10 C.F.R. §2.720, pursuant to which the subpoena was issued, follow the language of Rule 45, Federal Rules of Civil Procedure, by enabling the Licensing Board to "quash or modify the subpoena if it is unreasonable" or "condition denial of the motion [to quash] on just and reasonable terms."^{3/} The decisions of the Federal courts under Rule 45(b) establish the appropriateness of reimbursing a disinterested third party respondent to a subpoena, such as Gulf States, where the costs and expenses incident to compliance are substantial.

Although burdensome is not a defense to compliance with a subpoena, it is recognized that the subpoenaing party may be required to reimburse the respondent for its

^{3/} The Appeal Board in Illinois Power Co. (Clinton Power Station, Unit Nos. 1 and 2), ALAB-340, 4 NRC 27, 33 (1976), "noted the parallel between [NRC] discovery rules and those contained in the Federal Rules of Civil Procedure, specifically, the rules for production of documents under either Rule 34 or Rule 45(b). An earlier Appeal Board in Commonwealth Edison Co. (Zion Station, Units 1 and 2), ALAB-196, 7 AEC 457, 460 (1974), reviewing a demand for documents pursuant to a subpoena issued under Section 2.720, likewise commented that the Commission's Rules are "strikingly parallel to the analogous provisions of the Federal Rules of Civil Procedure."

expenses as a condition to a denial of a motion to quash. For example, in Miller v. Sun Chemical Corp., 12 F.R.D. 181, 183 (D.N.J. 1952), the court stated:

A subpoena need not be necessarily quashed because the documents sought are voluminous and cumbersome and because considerable trouble and expense are involved in producing them. . . . [I]f the plaintiff is subjected to any unusual expense in procuring the requested documents, the court may require that the reasonable cost of such production be assessed against the defendant."

In other cases, such as Goodman v. United States, 369 F.2d 166, 169 (9th Cir. 1966), and Freeman v. Seligson, 405 F.2d 1326, 1338 (D.C. Cir. 1968), the court cited the willingness of the subpoenaing party to bear the costs of compliance with the subpoena as evidence that the subpoena was not unreasonable or oppressive.

Where no such offer was tendered, the court has afforded the subpoena respondent protection by an order under Rule 45(b) conditioning denial of a motion to quash upon the reimbursement of such expenses. See, e.g., State Theatre Co. v. Tri-States Theatre Corp., 11 F.R.D. 381 (D. Neb. 1951); Fox v. House, 29 F.Supp. 673 (E. Okla. 1939); Collins & Aikman Corp. v. J.P. Stevens & Co., 51 F.R.D. 219 (D.S.C. 1971). In ordering the subpoenaing party to bear the expense of producing those documents it has demanded, the court in Celanese Corp. v. E.I. duPont Nemours & Co., 58 F.R.D. 606, 612 (D. Del. 1973), stated:

2356 090

The Court is fully aware that the documents which will be ordered produced, as indicated by the present record, are very numerous and the period covered extends over an inordinate number of years. The Court is also aware that the search and production of the broad category of documents will be time-consuming and expensive for DuPont which is not a party to the Florida litigation. The Court, therefore, will order that the search begin immediately, that the production be made weekly as the documents are collected, and that petitioners will be required to reimburse DuPont's reasonable expenses for the search and production.^{4/}

Moreover, the courts have specifically recognized that reimbursement to a third-party subpoena respondent is appropriate in agency proceedings. In United States v. Friedman, 532 F.2d 928 (3rd Cir. 1976), the Third Circuit reviewed a subpoena of the IRS demanding production of eight categories of bank documents. Even without authorization of a specific rule, such as the one adopted by the NRC in 10 C.F.R. §2.720(f), the Third Circuit fashioned a reimbursement principle by analogy from Rule 45(b) of the Federal Rules of Civil Procedure.

Although refusing to adopt such a principle with respect to grand jury subpoenas in criminal proceedings, the discussion of this issue by another court lends insight:

^{4/} Gulf States has, as stated, already compiled and reviewed the documents requested by Brownsville. It stands ready to tender such documents at its offices upon reimbursement of its expenses. While it has not been possible to prepare a complete tabulation of the man-hours and costs incident to production, Gulf States will provide the Licensing Board and Brownsville with appropriate affidavits and schedules establishing its incurred costs once the principle of reimbursement has been established.

[I]n a proceeding to enforce administrative subpoenas, Rule 45(b), F.R.Civ.P., provides expressly that the court may condition compliance with the subpoena on reimbursement. Rule 45(b) is made applicable to proceedings to enforce administrative subpoenas by Rule 81(a)(3), F.R.Civ.P. Application of the Civil Rules to administrative subpoenas, especially with respect to this provision for transferring the cost of compliance, reflects a significant policy judgment that the weight and import of administrative subpoenas is comparable to that of ordinary civil subpoenas and that witnesses, particularly neutral witnesses, should not bear unreasonable expenses in complying with subpoenas in either a civil or an administrative proceeding.^{5/}

More recently, the Court of Appeals for the District of Columbia has authorized reimbursement of a third-party's costs in complying with a subpoena duces tecum issued by a federal agency in Securities and Exchange Commission v. Arthur Young & Co., 584 F.2d 1018 (D.C. Cir. 1978). Although the Court of Appeals broadly read the authority of a federal agency to subpoena relevant documents, it balanced its conclusion by agreeing with the subpoena respondent that, in particular instances, administrative subpoenas might impose "an unconscionable burden, in the constitutional as well as the ordinary sense."^{6/} The Court of Appeals held that, under the

^{5/} In Re Grand Jury Subpoena Duces Tecum Issued to The First National Bank of Maryland Dated November 4, 1976, 436 F.Supp. 46, 48 (D. Md. 1977) (emphasis added) (footnotes omitted).

^{6/} 584 F.2d at 1031 (emphasis added).

circumstances, some consideration must be given to reimbursement for expenses incurred in compliance with the SEC subpoena:

No less than the District Court, we recognize the value of feasible conditions in the effort to minimize the onus of subpoena-compliance, and it is evident that cost-reimbursement could make a great deal of difference here.

.....

[J]udicial authority to temper enforcement with fairness stems inexorably from congressional entrustment of subpoena enforcement to the judiciary. Surely, then, in formulating protective conditions for administrative subpoenas, courts may resort analogously to techniques conventional to judicial subpoenas, and thus in safeguarding against undue financial outlays may appropriately insist upon a reasonable measure of reimbursement.

As applicant readily concedes, considerations of fairness do not call for reimbursement in every instance, or necessarily for full reimbursement in any given case. There is a continuing general duty to respond to governmental process; in consequence, subpoenaed parties can legitimately be required to absorb reasonable expenses of compliance with administrative subpoenas. It follows that the power to exact reimbursement as the price of enforcement is soundly exercised only when the financial burden of compliance exceeds that which the party ought reasonably be made to shoulder. And what is reasonable will depend--as over the legal spectrum it ultimately does--upon the circumstances of each case.^{7/}

^{7/} 584 F.2d at 1032-33 (emphasis added) (footnotes deleted). The Court of Appeals noted that it was "unable at this time to rule affirmatively that [the bank] is entitled to reimbursement, for its actual future expenses conceivably could fall far short of its present projection." 584 F.2d at 1034. Nonetheless, upon the offer of the bank, the

(Footnote ^{7/} continued on next page)

Under the principle established by the Court of Appeals, it is appropriate that Gulf States be fully reimbursed for its costs and expenses incident to full production. First, as in the Arthur Young & Co. case, Gulf States is "not the primary target"^{8/} of the pending NRC antitrust proceeding under §105c(2) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §2135(c)(2). The subpoena is not one issued by the NRC pursuant to its own inquiry, but rather at the behest of a private party seeking antitrust relief.^{9/} No allegation has been made that Gulf States is in violation of any antitrust law. Second, Gulf States has foregone any objection based on relevancy or burdensomeness, and has stated its intention to comply fully with the subpoena request by Brownsville under its modified schedule. Third, the costs and expenses incurred by Gulf States in producing the requested documents has been substantial, requiring hundreds of man-hours from administrative and managerial personnel, clerical personnel, and in-house

7/ continued

court expressly authorized postponement of reimbursement "until after full production," even though this arrangement could not have been demanded by the SEC as a matter of right. Id. Similarly, Gulf States wishes to comply with the subpoena demand and merely seeks recoupment after full production of expenses determined by the Licensing Board to be reasonable. However, prior to the commencement of production, the principle of recoupment should be established.

8/ 584 F.2d at 1031.

2356 094

9/ The instant proceeding therefore is distinguishable from enforcement actions in which recoupment of expenses incident to document production under Rule 45(b) has been denied such as United States v. International Business Machines Corp., 71 F.R.D. 88 (S.D.N.Y. 1976) and United States v. International Business Machines Corp., 62 F.R.D. 507 (S.D.N.Y. 1974).

10/
counsel.

In Public Service Company of Oklahoma (Black Fox, Units 1 and 2), LBP-77-18, 5 NRC 671 (1977), the Licensing Board held that it could require payment of expert witness fees under the provisions of either Section 2.740(c) of the Commission's Rules of Practice, governing protective orders; or Section 2.720(f), governing conditions imposed for denial of a motion to quash. The Licensing Board pointed out that its construction of these rules was intended to afford reimbursement for discovery expenses incurred by the responding party similar to that available under the Federal Rules of Civil Procedure. The parties were directed to reach an agreement as to "reasonable fees," but were directed to go forward with the depositions even if an agreement could not be reached, leaving the Board to determine upon a subsequent submission the fee to be awarded. It is suggested that the same approach is appropriate here in order to avoid unnecessary delay in the instant proceeding and to assure Gulf States that its reasonable costs and expenses will ultimately be recouped.

10/ Gulf States does not seek recoupment of legal fees incurred with respect to this subpoena. However, it should be noted that these costs, too, have been substantial because of the necessity to review many documents for possible claims of proprietary privilege, the preparation of a proposed protective order, the instant motion, as well as coordinating a response by Gulf States and negotiating with counsel for Brownsville for compliance with the subpoena. The fact that these extraordinary expenses cannot be recovered is an additional reason why the Licensing Board should permit Gulf States to recoup its other reimbursable expenses.

2. Gulf States is Entitled to Protection of Confidential Business Information and Attorney/Client Communications. Gulf States has submitted a proposed form of protective order which would limit confidential business information to a specified number of persons, including counsel, who promise not to disclose the furnished information.^{11/} The provisions of this guarantee against unauthorized disclosure are similar to those in protective orders issued by this Board in protecting against disclosure of confidential business information.

In addition, however, certain of the documents demanded by the subpoena relate to ongoing negotiations with the Sam Rayburn Dam Electric Cooperative,^{12/} and disclosure of the substance of these negotiations, even under the safeguards afforded by a protective order limiting further disclosure, might seriously jeopardize negotiations. If other investors or potential participants were to learn the details of these negotiations, the competitive position of either Gulf States or Sam Rayburn Dam Electric Cooperative would be compromised. Moreover, even the mere possibility of disclosure (unknown to participants) might itself be sufficient to disrupt negotiations.

^{11/} See, e.g., Kansas Gas and Electric Company (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-327, 3 NRC 408 (1976).

^{12/} These documents relate to a proposed participation agreement between Gulf States and the Sam Rayburn Dam Electric Cooperative in the River Bend Nuclear Plant and, second, renegotiation of an existing contract with the Sam Rayburn Dam Electric Cooperative for transmission of its power from the dam by Gulf States to the Cooperative's members after November 1980. Upon request, Gulf States will submit these documents for an in camera inspection by the Licensing Board.

Given the obvious sensitivity of these ongoing negotiations, neither Gulf States nor the Sam Rayburn Dam Electric Cooperative should be asked to run the risk of disclosure incident to document production even under a limiting protective order. Nonetheless, in order to accommodate the needs of the parties to this proceeding for relevant information, Gulf States is willing to provide a summary of these documents.

Finally, a number of the documents that fall within the scope of the subpoena are communications to and from Gulf States and its counsel. These documents should be fully protected against disclosure under the familiar principle of attorney/client privilege.^{13/} Numerous decisions have sustained a claim of privilege asserted by a corporation with respect to similar correspondence to and from counsel. Diversified Industries, Inc. v. Meredith, 572 F.2d 596 (8th Cir. 1977); Natta v. Zletz, 418 F.2d 633 (7th Cir. 1969); Natta v. S. S. Corp., 392 F.2d 686 (10th Cir. 1968); Pfizer, Inc. v. Lord, 456 F.2d 145 (8th Cir. 1972).

Conclusion

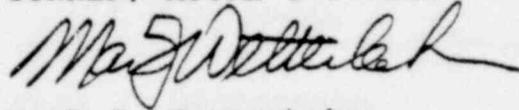
For the reasons more fully discussed above, it is respectfully requested that the Licensing Board enter the protective order proposed by Gulf States for the safeguarding of confidential business information and reimbursement of costs

^{13/} The attorney/client communications are too numerous to list here, but such an enumeration will be provided if requested.

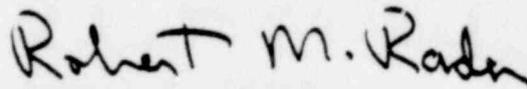
and expenses incurred in the production of documents pursuant to the Licensing Board's subpoena.

Respectfully submitted,

CONNER, MOORE & CORBER



Mark J. Wetterhahn



Robert M. Rader

2356 098

April 25, 1979

SPIEGEL & McDIARMID

2600 VIRGINIA AVENUE, N.W.

WASHINGTON, D.C. 20037

TELEPHONE (202) 333-4500

TELECOPIER (202) 333-2974

IE SPIEGEL
IT C. McDIARMID
IA J. STREBEL
IT A. JABLON
N. HORWOOD
L. ROTH
ES E. FRANCIS
L. DAVIDSON
S. N. McHUGH, JR.
J. GUTTMAN
K. MATT
R. STRAUS

BONNIE S. BLAIR
ROBERT HARLEY BEAR
THOMAS C. TRAUGER
JOHN MICHAEL ADRAGNA
CYNTHIA S. SOGORAD
(MASSACHUSETTS BAR ONLY)
GARY J. NEWELL
MARC R. POIRIER

March 5, 1979

Benjamin H. Hughes, Esquire
Orgain, Bell & Tucker
P.O. Box 1751
Beaumont, Texas 77704

Re: Houston Lighting & Power Company, et al.
(South Texas Project Units No. 1 & No. 2)
NRC Docket Nos. 50-498A, 50-499A

Dear Mr. Hughes:

As we discussed today by telephone, although the Public Utilities Board of the City of Brownsville, Texas ("Brownsville") has prepared a subpoena for production of documents to Gulf States Utilities Company ("GSU") in the above proceeding, informal cooperation will be advantageous to GSU as well as Brownsville, and will speed the preparation of our case. In the interest of cooperation, I am enclosing, as you requested, a list of topics on which we consider it essential to have access to GSU's documents for inspection and copying. This list is drawn from, and is a subset of, the requests for documents to which GSU would be obligated to respond under subpoena. We propose it to you as a means of accomodation, and without prejudice to Brownsville's right to seek compliance with the NRC subpoena.

I am telecopying to you a copy of this letter and the attached schedule so that you may confer right away with the GSU counsel you have contacted. I expect to be in touch with you very shortly about this matter.

Very truly yours,

Marc Poirier

Marc R. Poirier

Attorney for the Public Utilities
Board of the City of Brownsville,
Texas

2356 099

MRP:ps
Enclosure

SCHEDULE

- A. Maps sufficient to indicate all actual and projected GSU transmission and subtransmission lines located within the State of Texas. (1(a))
- B. All documents relating to each offer of participation in any nuclear electric generating unit located in Texas, made or received by GSU; all documents relating to participation, actual or potential, by any electric utility in the South Texas Units, including the terms and conditions, limitations or restrictions of such participation. (5(a) & (b))
- C. All documents relating to GSU policy for sale of power, establishing terms for sale of power, or to interconnected operation or transmission services by GSU to municipally or cooperatively owned and/or operated electric utilities located in whole or in part in the state of Texas. (Parts of questions 6,7,8,9,10,11)
- D. All documents relating to policy for participation by any utility located in whole or in part in Texas in any generation facility of which GSU is whole or part owner. (8(b))
- E. All principal documents relating to each reason why GSU does not operate in synchronism with any electric utility that is a member of TIS; all documents relating to relative advantages to any electric utility of operation solely within the state of Texas and operating in interstate commerce; all documents relating to any study or report by any electric utility, or by any state or federal agency that regulates electric utilities, the subject of which relates to, in whole or in part, potential operation of any electric utility or utilities actually operating solely within the state of Texas so as to place such utility or utilities into interstate commerce (including documents relating to communications between GSU and any other electric utility relating to any such study or report) (13(a), (b) & (c)).

2356 100

- F. All documents relating to the wholesale sale of power and/or energy by GSU to College Station, Texas, including rates and terms and construction of interconnections and/or transmission lines. (14(a), (b) & (c))
- G. All documents relating to actual, potential, possible or contemplated competition between GSU and any other electric utility located in Texas. (15)

2356 101

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



In the Matter of)	
)	
HOUSTON LIGHTING AND POWER COMPANY)	Docket Nos. 50-498A
THE CITY OF SAN ANTONIO)	50-499A
THE CITY OF AUSTIN AND)	
CENTRAL POWER AND LIGHT COMPANY)	
)	
(South Texas Project, Units Nos.)	
1 and 2))	

PROTECTIVE ORDER

WHEREAS, by subpoena of the Atomic Safety and Licensing Board ("Licensing Board") in these proceedings dated February 26, 1979, Gulf States Utilities Company ("Gulf States") was, at the request of Public Utilities Board of the City of Brownsville, Texas ("Brownsville") pursuant to 10 C.F.R. §2.720, commanded to make available for inspection and copying the documents described in the Schedule attached to said subpoena;

AND, WHEREAS, Gulf States has shown good cause for the imposition of terms and conditions for compliance with said subpoena under 10 C.F.R. §§2.720(f) and 2.740(c) as set forth below;

IT IS HEREBY ORDERED THAT:

1. Production by Gulf States of those documents specified in the attached Schedule in lieu of the documents specified in the Schedule to Subpoena for Production of Documents attached to the Licencing Board's subpoena of February 26, 1979, in accordance with the terms and conditions stated below, shall

be deemed full and complete compliance with the subpoena of the Licensing Board.

2. City of Brownsville shall bear all costs and expenses incurred by Gulf States in responding to the Licensing Board's subpoena of February 26, 1979.

3. As used herein, "confidential business information" is information which concerns and relates to the trade secrets or other confidential business plans, procedures, relationships or arrangements of any kind which, if disclosed, have the potential of causing harm to the competitive position of the person, firm, partnership, corporation or other organization from which the information was obtained and as to which that person, firm, partnership or corporation could claim confidential treatment. Such confidential information shall include, but not be limited to, data, information, or options furnished by third parties to Gulf States for the purpose of preparing and conducting a joint study of the feasibility of interconnection, the construction of jointly owned or utilized generation or transmission facilities; offers and responses with regard to participation by Gulf States or a third party in the ownership, construction or operation of any electric power facility or portion thereof; and, the terms and conditions of any contract currently under negotiation between Gulf States and any other party for the sale or supply of electric power (excluding documents covered by Paragraph 14 below).

4. Any documents produced in response to the subpoena of February 26, 1979, which are asserted by Gulf States to

contain or constitute such confidential business information shall be so designated in writing and shall be segregated from other information being produced. Documents shall be clearly and prominently marked on their face with the legend: "GULF STATES CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER," or a comparable notice. As used herein, "document" shall include all contents or any portion of any document so designated. Only in camera disclosure of such documents shall be made at any hearing before the Nuclear Regulatory Commission ("Commission"), the Licensing Board or the officer presiding over this proceeding.

5. Confidential documents produced in accordance with the provisions of paragraph 4 above shall not be disclosed to any person other than: (i) counsel for parties to this proceeding, including necessary secretarial and clerical personnel assisting such counsel; (ii) qualified persons taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (iii) independent consultants and technical experts and their staff who are engaged directly in this litigation; (iv) the Commission, the Licensing Board, the presiding officer, or Commission's Staff.

6. Confidential business information submitted in accordance with the provisions of paragraph 4 above shall not be made available to any person designated in paragraph 5(i) and (iii) unless they shall have first read this Order and shall have agreed, in writing: (i) to be bound by the terms

thereof; (ii) not to reveal such confidential business information to anyone other than another person designated in paragraph 5; and (iii) to utilize such confidential business information solely for purposes of this proceeding.

7. If the Commission or the Licensing Board orders that access to or dissemination of documents designated confidential shall be made to persons not included in paragraph 5 above, such documents shall be accessible to or disseminated to such other persons only upon the conditions and obligations of this Order. Such persons shall agree in writing to be bound thereby prior to such access or dissemination.

8. Any confidential document shall be submitted to the Commission, Licensing Board or the presiding officer only in connection with a motion or other procedure within the purview of this proceeding, and shall be submitted under seal in the manner described in paragraph 4 above. Any portion of a transcript in connection with this proceeding containing any confidential document submitted pursuant to paragraph 4 above shall be bound separately and filed under seal. When any confidential documents submitted in accordance with paragraph 4 above is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the deposition to bind such confidential portions and separately label them "GULF STATES CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter receives any such document, he or she shall have first read this Order and shall have

agreed in writing to be bound by the terms thereof. Copies of each such signed agreement shall be provided to Gulf States.

9. Any document produced and designated as confidential pursuant to paragraph 4 above is to be treated as such within the meaning of 5 U.S.C. §552(b)(4) and 18 U.S.C. §1905, subject to a final ruling, after notice, by the Commission, Licensing Board, the presiding officer, or the Commission's Freedom of Information Act Officer to the contrary, or by appeal of such a ruling, interlocutory or otherwise.

10. The Commission's Staff shall take all necessary and proper steps to preserve the confidentiality of, and protect Gulf States' rights with respect to, any confidential documents designated by Gulf States in accordance with paragraph 4 above, including, without limitation, (a) notifying Gulf States promptly of: (i) any inquiry or request by anyone for the contents of or access to such confidential documents (other than those authorized pursuant to this Order) under the Freedom of Information Act, as amended, 5 U.S.C. §552, and (ii) any proposal to declassify or make public any such confidential document; and (b) providing Gulf States at least seven days after receipt of such inquiry or request within which to take action before the Commission, the Board, its Freedom of Information Act Officer, or the presiding officer, or otherwise to preserve the confidentiality of such confidential documents.

2356 106

11. If confidential documents produced in accordance with paragraph 4 are disclosed to any person other than in the manner authorized by this Order, the person responsible for the disclosure shall immediately bring all pertinent facts relating to such disclosure to the attention of Gulf States and the presiding officer and, without prejudice to other rights and remedies of Gulf States, make every effort to prevent further disclosure by him or by the person to whom the document was improperly disclosed.

12. Nothing in this Order shall abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, the Licensing Board or the presiding officer concerning the status of confidential documents.

13. Upon final termination of this proceeding, each person subject to this Order shall assemble and return to Gulf States all confidential documents as well as all other documents containing confidential business information produced in accordance with paragraph 4 above, including all copies of such matter which may have been made, but not including copies containing notes or other attorney's work product that may have been placed thereon by counsel for the receiving party. All copies containing notes or other attorney's work product shall be destroyed, and certification of same shall be made to Gulf States. Receipt of material

2356 107

returned to Gulf States shall be acknowledged in writing. This paragraph shall not apply to the Commission, the Board, the presiding officer and the NRC Staff, which shall retain such material pursuant to statutory requirements and for other recordkeeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

14. Gulf States need not produce any documents required by the subpoena that relate to its proposed participation agreement with the Sam Rayburn Dam Electric Cooperative, Inc. for the River Bend Nuclear Plant. Upon request, Gulf States shall provide a summary of documents particularly requested so as not to compromise its proprietary interests. If the parties are unable to reach agreement on the sufficiency of Gulf States' response, the documents shall be submitted to the Licensing Board for in camera inspection. If the Board determines that the inspected documents may be disclosed, such disclosure shall be in accordance with the terms and conditions of paragraphs 3-13 of this Order, except that the Board may order that the documents be produced only in part of with certain deletions to protect the confidentiality of proprietary interests.

15. Gulf States need not produce any correspondence or communication between Gulf States and outside counsel. Gulf States shall, upon request, furnish a list of such documents with a description of each. If the privileged nature of the document is contested, the document shall be submitted to the Licensing Board for in camera inspection. If the Board

determines that the inspected documents may be disclosed, such disclosure shall be in accordance with the terms and conditions of paragraphs 3-13 of this Order, except that the Board may order that the documents be produced only in part or with certain deletions to protect attorney/client confidentiality.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Dated at Bethesda, Maryland
this day of , 1979.

2356 109

SCHEDULE

- A. Maps sufficient to indicate all actual and projected GSU transmission and subtransmission lines located within the State of Texas. (1(a))
- B. All documents relating to each offer of participation in any nuclear electric generating unit located in Texas, made or received by GSU; all documents relating to participation, actual or potential, by any electric utility in the South Texas Units, including the terms and conditions, limitations or restrictions of such participation. (5(a) & (b))
- C. All documents relating to GSU policy for sale of power, establishing terms for sale of power, or to interconnected operation or transmission services by GSU to municipally or cooperatively owned and/or operated electric utilities located in whole or in part in the state of Texas. (Parts of questions 6,7,8,9,10,11)
- D. All documents relating to policy for participation by any utility located in whole or in part in Texas in any generation facility of which GSU is whole or part owner. (8(b))
- E. All principal documents relating to each reason why GSU does not operate in synchronism with any electric utility that is a member of TIS; all documents relating to relative advantages to any electric utility of operation solely within the state of Texas and operating in interstate commerce; all documents relating to any study or report by any electric utility, or by any state or federal agency that regulates electric utilities, the subject of which relates to, in whole or in part, potential operation of any electric utility or utilities actually operating solely within the state of Texas so as to place such utility or utilities into interstate commerce (including documents relating to communications between GSU and any other electric utility relating to any such study or report) (13(a), (b) & (c)).

2356 110

- F. All documents relating to the wholesale sale of power and/or energy by GSU to College Station, Texas, including rates and terms and construction of interconnections and/or transmission lines. (14(a), (b) & (c))
- G. All documents relating to actual, potential, possible or contemplated competition between GSU and any other electric utility located in Texas. (15)

2356 111

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
)
Houston Lighting & Power Company) Docket Nos. 50-498A
The City of San Antonio) and 50-499A
The City of Austin)
Central Power & Light Company)
(South Texas Project, Unit Nos.)
1 and 2))

CERTIFICATE OF SERVICE

I hereby certify that copies of "Motion by Respondent Gulf States Utilities Company for a Protective Order and an Order Setting Conditions for Compliance with Subpoena," dated April 25, 1979, and a proposed "Protective Order," in the captioned matter, have been served upon the following by deposit in the United States mail this 25th day of April, 1979:

Marshall E. Miller, Chairman
Atomic Safety & Licensing Board
Panel
Nuclear Regulatory Commission
Washington, D. C. 20555

Sheldon J. Wolfe, Esquire
Atomic Safety & Licensing Board
Panel
Nuclear Regulatory Commission
Washington, D. C. 20555

Michael L. Glaser, Esquire
1150 17th Street, N. W.
Washington, D. C. 20036

Joseph J. Saunders, Esquire
Chief, Public Counsel &
Legislative Section
Department of Justice
P. O. Box 14141
Washington, D. C. 20044

Joseph Gallo, Esquire
Richard D. Cudahy, Esquire
Robert H. Loeffler, Esquire
Isham, Lincoln & Beale
Suite 701
1050 17th Street, N. W.
Washington, D. C. 20036

2356 112

Joseph Rutberg, Esquire
Antitrust Counsel
Counsel for NRC Staff
Nuclear Regulatory Commission
Washington, D. C. 20555

Chase R. Stephens, Chief
Docketing and Service Section
Office of the Secretary
Nuclear Regulatory Commission
Washington, D. C. 20555

Douglas F. John, Esquire
Akin, Gump, Hauer & Feld
1100 Madison Office Building
1155 15th Street, N. W.
Washington, D. C. 20024

R. Gordon Gooch, Esquire
John P. Mathis, Esquire
Baker & Botts
1701 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Robert Lowenstein, Esquire
J. A. Bouknight, Jr., Esquire
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, N. W.
Washington, D. C. 20036

William J. Franklin, Esquire
Lowenstein, Newman, Reis &
Axelrad
1025 Connecticut Avenue, N. W.
Washington, D. C. 20036

Frederick H. Ritts, Esquire
Law Offices of Northcutt Ely
Watergate 600 Building
Washington, D. C. 20037

Wheatley & Wolleson
1112 Watergate Office Building
2600 Virginia Avenue, N. W.
Washington, D. C. 20037

John D. Whitler, Esquire
Ronald Clark, Esquire
Department of Justice
P. O. Box 14141
Washington, D. C. 20044

Joseph Knotts, Esquire
Nicholas S. Reynolds, Esquire
Debevoise & Liberman
1200 17th Street, N. W.
Washington, D. C. 20036

Joseph I. Worsham, Esquire
Merlyn D. Sampels, Esquire
Worsham, Forsythe & Sampels
2001 Bryan Tower, Suite 2500
Dallas, Texas 75201

Spencer C. Relyea, Esquire
Worsham, Forsythe & Sampels
2001 Bryan Tower, Suite 2500
Dallas, Texas 75201

R. L. Hancock, Director
City of Austin Electric
Utility Department
P. O. Box 1088
Austin, Texas 78767

Jerry L. Harris, Esquire
City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767

Richard C. Balough, Esquire
Assistant City Attorney
City of Austin
P. O. Box 1088
Austin, Texas 78767

Dan H. Davidson
City Manager
City of Austin
P. O. Box 1088
Austin, Texas 78767

2356 113

Roff Hardy, Chairman and Chief
Executive Officer
Central Power & Light Company
P. O. Box 2121
Corpus Christi, Texas 78403

G. K. Spruce, General Manger
City Public Service Board
P. O. Box 1771
San Antonio, Texas 78203

Jon C. Wood, Esquire
W. Roger Wilson, Esquire
Matthews, Nowlin, Macfarlane
& Barrett
1500 Alamo National Building
San Antonio, Texas 78205

Perry G. Brittain, President
Texas Utilities Generating
Company
2001 Bryan Tower
Dallas, Texas 75201

E. W. Barnett, Esquire
Charles G. Thrash, Jr., Esquire
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

J. Gregory Copeland, Esquire
Theodore F. Weiss, Jr., Esquire
Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

G. W. Oprea, Jr.
Executive Vice President
Houston Lighting & Power Company
P. O. Box 1700
Houston, Texas 77001

Don R. Butler, Esquire
Sneed, Vine, Wilkerson, Selman
& Perry
P. O. Box 1409
Austin, Texas 78767

Morgan Hunter, Esquire
McGinnis, Lochridge & Kilgore
900 Congress Avenue
Austin, Texas 78701

Kevin B. Pratt, Esquire
Assistant Attorney General
P. O. Box 12548
Capital Station
Austin, Texas 78711

Linda L. Aaker, Esquire
Assistant Attorney General
P. O. Box 12548
Capital Station
Austin, Texas 78711

John E. Mathews, Jr., Esquire
Mathews, Osborne, Ehrlich,
McNatt, Gobelman & Cobb
1500 American Heritage Life Bldg.
Jacksonville, Florida 32202

Robert E. Bathen
R. W. Beck & Associates
P. O. Box 6817
Orlando, Florida 82803

Somervell County Public Library
P. O. Box 417
Glen Rose, Texas 76403

Maynard Human, General Manager
Western Farmers Electric Coop.
P. O. Box 429
Anadarko, Oklahoma 73005

W. S. Robson, General Manager
South Texas Electric Cooperative,
Inc.
Route 6, Building 102
Victoria Regional Airport
Victoria, Texas 77901

Michael I. Miller, Esquire
Richard E. Powell, Esquire
Isham, Lincoln & Beale
One First National Plaza
Chicago, Illinois 60603

David M. Stahl, Esquire
Thomas G. Ryan, Esquire
Isham, Lincoln & Beale
One First National Plaza
Chicago, Illinois 60603

Knoland J. Plucknett
Executive Director
Committee on Power for the
Southwest, Inc.
5541 Skelly Drive
Tulsa, Oklahoma 74135

Marc R. Poirier, Esq.
Spiegel & McDiarmid
2600 Virginia Avenue, N.W.
Washington, D. C. 20037

James E. Monahan
Executive Vice President and
General manager
Brazos Electric Power Coop., Inc.
P. O. Box 6296
Waco, Texas 76706

Judith Harris, Esquire
Department of Justice
P. O. Box 14141
Washington, D. C. 20044

Jerome Saltzman, Chief
Antitrust & Indemnity Group
Nuclear Regulatory Commission
Washington, D. C. 20555

Jay M. Galt, Esquire
Looney, Nichols, Johnson &
Hayes
219 Couch Drive
Oklahoma City, Oklahoma 73101

Robert M. Rader
Robert M. Rader

2356 115