

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of )  
 )  
HOUSTON LIGHTING & POWER COMPANY, )  
THE CITY OF SAN ANTONIO, )  
THE CITY OF AUSTIN, and )  
CENTRAL POWER AND LIGHT COMPANY )  
 )  
(South Texas Project, Unit Nos. )  
1 and 2) )

Docket Nos. 50-498A  
50-499A

TUGCO'S OBJECTIONS TO AND MOTIONS FOR  
PROTECTIVE ORDERS REGARDING CERTAIN OF  
DEPARTMENT'S INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS

Texas Utilities Generating Company, et al ("TUGCO") is today responding in a separate document to the interrogatories and requests for production of documents directed to TUGCO by the Department of Justice on November 22, 1978. TUGCO submits herein its objections and requests for protective orders in order to protect its rights under 10 C.F.R. §2.740 (f).

Pursuant to 10 C.F.R. §2.740(c), a protective order may be entered to protect the party from whom discovery is sought from annoyance, oppression, undue burden or expense. Examples of such orders given in the regulations are: "(1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions . . .; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; and . . .; (7) that studies and evaluations not be prepared."

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TUGCO's objections and request for protective orders are directed to certain definitions and instructions contained in the Department's request (and hence to all inquiries and responses involving those definitions or instructions) and to specific combined interrogatories and document requests (those numbered 3, 4, 7, 9, 16, 20, 21, 23 and 25. In most instances, TUGCO is making such response as it considers it reasonably can to the thrust of these inquiries.

OBJECTIONS AND REQUESTS FOR PROTECTIVE ORDERS

Definitions

Definition A.3 seems to require identification of documents already copied and delivered to the Department. TUGCO believes that if such is intended, it casts an unfair burden on it, and is not willing to identify documents already in the hands of the Department. In other words, it should not fall to TUGCO to prepare an index or catalogue of documents already furnished the Department. TUGCO's objections and request for a protective order are discussed in greater detail with respect to General Instruction E.1.

Definition A.8 purports to require responses with regard to possible or contemplated actions. It is extremely difficult and burdensome if not impossible to fully respond to interrogatories based on a definition of such vagueness and breadth (even reaching mental impressions) and covering such an extended period of time. To the extent that possible or contemplated actions were documented,

these can be (and we are informed have been) collected in the district court litigation and provided to the Department. Accordingly TUGCO objects and requests that the operation of this definition be modified with respect to interrogatories to require no more than a reasonable inquiry of likely officers as to their recollection of contemplated actions, and limited to such contemplated actions as reached the stage of discussion among senior management.

### Instructions

Instruction C pertains in part to assertions of privilege. We are informed that no privileged documents have become involved for the first time in these responses. However, some documents as to which privilege has already been asserted and identifying information supplied are or may be involved in some responses to document requests and these should be considered excepted from responses. In any event, TUGCO's assertion of privilege is in no way waived. Moreover, the instruction purports to require that documents as to which privilege is asserted be delivered to the Licensing Board under seal. We do not believe that the Licensing Board should be unnecessarily burdened with such matters and in any event do not believe that the suggested procedure is an appropriate one. TUGCO objects and requests that the instructions be modified accordingly.

General Instruction E.1 seems to require, in the case of documents already made available to the Department, detailed identifying information. TUGCO asserts that such a request is burdensome and uncalled for and inconsistent with the letter and spirit of the stipulation of the parties regarding discovery

in other proceedings and the Licensing Board order on the same subject. Moreover, for the Department to cast upon TUGCO the burden of determining which of the documents the Department requested and already has should be matched with what questions in its current interrogatories and document requests is for the Department to have TUGCO do its indexing. It would be unduly burdensome and expensive for TUGCO to have to match up documents already provided with after-the-fact questions, especially where the questions do not reflect an effort to avoid duplicative discovery. TUGCO therefore objects and requests a protective order to the effect that identification or matching of documents already produced with subsequent questions not be required.

In regard to the Department's instructions for responses to the interrogatories and document requests as a whole, TUGCO requests a protective order to the effect that the form of response to an interrogatory may be references to documents produced. In other words, documents should be considered a sufficient answer to interrogatories without a complete paraphrase or catalogue. TUGCO objects and requests a protective order to the foregoing effect.

Before proceeding to the specific interrogatory and document requests, an observation and suggestion are in order. At the June 21st prehearing conference, counsel for the Department noted (Tr. 118 - 119) that it would be working on a proposed factual stipulation and that it hoped it would be in a position to put forward a draft of such stipulation "about four months into discovery". Such has not yet been done. It appears to us that, if

mutual agreement were reached on such a stipulation, this would obviate the need for the Department and TUGCO to go through much time-consuming and expensive searching out of examples of actions or of patterns of conduct when the general proposition sought to be established could more easily have been negotiated and stipulated to. If the Department will come forward with its draft stipulation even now, perhaps much if not all of the Department's task of resolving disputed matters regarding these interrogatories and document requests can be eliminated.

Specific Interrogatories and Document Requests

Question 3 begins with "describe in detail". TUGCO objects and moves for a protective order to the effect that the summary response, taken together with the documents already in the hands of the Department, suffice for any reasonable discovery need.

Interrogatory 4 seeks to have TUGCO describe certain policies or reasons for conduct "in order of their relative importance". TUGCO objects and requests a protective order to the effect that it not be required to rank its reasons for historically avoiding interstate operations where such would entail plenary FPC (now FERC) jurisdiction, and, further, that the summary response provided should be deemed sufficient when viewed in conjunction with the documents referred to in response to document request 1.e.

Interrogatory 7 refers to "threats" by TUGCO. TUGCO objects to that term on the ground that it is argumentative and requests that the interrogatory be deemed modified to read "advised" or "notified" as the context may require.

Interrogatory 9 is unduly broad. While the summary response provided to the interrogatories and the document references furnished constitute, we are informed, a complete answer to the best of the knowledge of the individuals involved, there can be no assurances that all occasions of communication and all documents involved have in fact been obtained despite good faith efforts to that end. Accordingly, TUGCO objects and requests that the interrogatory be modified to require no more than a good faith effort to provide a reasonably complete response.

Interrogatory 16 seeks extremely extensive information over a 28-year period. Although the request is quite burdensome, and very time-consuming, the protective order which TUGCO requests here is a reasonable additional period of time within which to collect the information requested, and to be accorded the flexibility to furnish the requested information in somewhat different form (to the extent it is not available in the form requested).

Interrogatory 20 is another instance where the Department seeks a catalogue of every communication on a particular subject. It would be unduly burdensome, if not impossible, to answer this interrogatory as framed to the extent that it goes beyond documented communications. Moreover, as framed, the interrogatory would require the indexing of documents already furnished the Department and, as discussed above, such should not be required. Accordingly, TUGCO objects and requests a protective order to the effect that production of documents regarding the formation of ERCOT suffices by way of answer to both the interrogatories and the document request.

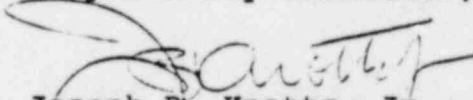
The thrust of interrogatory number 21 has been fully addressed in discovery and testimony in the District Court proceeding. Accordingly, TUGCO objects and requests a protective order to the effect that reference to those documents should be deemed to constitute a sufficient response to the interrogatory and the document request.

Interrogatory 23 seeks a detailed catalogue of all instances where inspections were made of equipment designed to prevent the flow of electric power in interstate commerce and related information pertaining to installation or maintenance of such devices and the costs associated therewith. It would be extremely burdensome if not impossible to answer this interrogatory as framed, particularly with regard to undocumented instances. For purposes of the present proceeding, the summary response provided and documents referenced should be deemed sufficient. No cost estimates should be required of TUGCO since such would require TUGCO to perform a study which, if the Department requires one, should be performed by its consultants or expert witnesses. Accordingly, TUGCO objects and requests a protective order to the foregoing effect.

Interrogatory 25 is in part argumentative in its entirety, in part founded on an hypothetical premise which has no present foundation and in part would require TUGCO to perform studies for the benefit of the Department which more properly should be performed by its consultants or expert witnesses at its expense. The interrogatory is argumentative in that it assumes some "excess"

cost associated with intrastate operation and no benchmark case is given for comparison. Of course, the only alternative to intrastate operation is interstate operation, and if that is the premise of the question there is no foundation for the proposition that interstate operation is cheaper than intrastate operation (which would be required to produce an "excess" cost for intrastate operation). Accordingly, TUGCO objects and requests a protective order to the effect that this discovery not be had.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of "TUGCO's Objections to and Motions for Protective Orders Regarding Certain of Department's Interrogatories and Requests for Production of Documents" in the captioned matter were served upon the following persons by deposit in the United States mail, first class postage prepaid, this 12th day of January, 1979:

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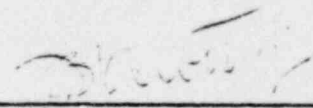
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