UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

HOUSTON LIGHTING & POWER COMPANY'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS
SUBPOENAED FROM THE FILES OF
THE MIDWEST ELECTRIC COOPERATIVE

Houston Lighting & Power Company (Houston) moves the Atomic Safety and Licensing Board (the Board) to issue an Order compelling the Midwest Electric Cooperative (Midwest) and its General Manager, Mr. Parker Wetzel, to produce for inspection and copying the documents responsive to the subpoena served on Mr. Wetzel in this matter.

On February 1, 1980, the Department of Justice (the Department) filed its Fourth Supplemental Response to Houston's Second Set of Interrogatories, adding to its witness list the name of Mr. Parker Wetzel, General Manager

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of the Midwest Electric Cooperative in Roby, Texas. Houston requested and the Board issued a subpoena (Attachment A) directed to Mr. Wetzel, which required him to appear on February 22, 1980, and bring documents responsive to the subpoena. Shortly before his deposition, Mr. Wetzel notified counsel for Houston that he was to undergo an operation and had been advised by his doctor not to travel to Dallas for his deposition on the 22nd. Counsel for Houston contacted counsel for the Department and obtained an agreement from the Department that Mr. Wetzel's deposition could be re-scheduled after the formal close of factual discovery in this matter in return for Houston's agreement not to press for Mr. Wetzel's deposition on the 22nd.

Counsel for Houston is currently negotiating the re-scheduling of Mr. Wetzel's deposition with the Department. However, counsel for Houston has been notified by Mr. Wetzel's attorney, Mr. Robert O'Neil, that Mr. Wetzel will not comply with the subpoena issued to him with respect to the production of documents at his deposition. Mr. O'Neil has taken the same position with respect to documents subpoenaed from another of the Department's witnesses, Mr. Elton McGinnes, whose deposition was taken on February 21, 1980. Mr. McGinnes' refusal to produce documents at his deposition, and his counsel's subsequent refusal to produce any documents with or without a Protective Order, is the

subject of a separate motion to compel filed by Houston. [See Houston Lighting & Power Company's Motion to Compel Production of Documents Subpoenaed from the Files of the Southwest Texas Electric Cooperative.]

It is Houston's position that the documents Mr. Wetzel intends to withhold go to the heart of the testimony that the Department intends to elicit from him. This was certainly true in the case of Mr. McGinnes' testimony, and Houston believes that Mr. Wetzel's testimony will be virtually identical to that of Mr. McGinnes.[1/]

Houston's right to cross-examine and obtain discovery from Mr. Wetzel will be severely impaired unless Mr. Wetzel is compelled to produce the documents requested in the subpoena served upon him. No witness in this proceeding has been permitted to ignore the subpoenas of the parties, nor should such behavior be countenanced. Consequently, Houston requests that the Board enter an Order requiring the Midwest Electric Cooperative immediately to produce the documents responsive to the subpoena served upon Mr. Parker Wetzel. In the alternative, Houston requests that the Board order that if such documents are not produced, Mr. Wetzel

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1/ Houston has attempted to negotiate the production of the subpoenaed documents under a Protective Order with counsel for both of the recalcitrant witnesses, to no avail. Neither of the witnesses have sought to quash their subpoenas or to otherwise seek protection beyond their flat refusal to produce any of the subpoenaed documents.

and all other members or representatives of the Midwest Electric Cooperative may not testify at the hearing, and that the deposition testimony of Mr. Wetzel be stricken from the record in this matter.

Respectfully submitted,

Douglas G. Green

Attorney for Houston Lighting
& Power Company

OF COUNSEL:

Baker & Botts
3000 One Shell Plaza
Houston, Texas 77002

Lowenstein, Newman, Reis
Axelrad & Toll
1025 Connecticut Avenue, N.W.
Washington, D. C. 20036

Dated: March 26, 1980

ATTACHMENT A

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
	)	
HOUSTON LIGHTING & POWER COMPANY, et al.	)	Docket Nos. 50-498A 50-499A
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(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)	)	

SUBPOENA

TO: Parker Wetzel
Midwest Electric Coop
P.O. Box 518
Roby, Texas 79543

YOU ARE HEREBY COMMANDED, pursuant to the Atomic Energy Act of 1954, as amended, and 10 C.F.R. §2.720, to appear at the (2500) Bryan Tower, 2001 Bryan Street, in the City of Dallas, Texas on the 22nd day of February, 1980 at 9:00 A.M. (and thereafter from day to day, if necessary) to testify by deposition on oral examination in the above-entitled action, and to bring with you the document(s) or objects described in the attached schedule. Your testimony will be required as to the testimony you may give in the trial of this action, all matters relating thereto, and all subject matters covered in the

attached schedule.

BY ORDER OF THE ATOMIC SAFETY
AND LICENSING BOARD

By _____

_____

. . . . . , 19 . .

Douglas G. Green
Attorney for Houston Lighting
& Power Company
LOWENSTEIN, NEWMAN, REIS,
AXELRAD & TOLL
1025 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 862-8400

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10 C.F.R. 2.720(f)

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the presiding officer or, if he is unavailable, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms.

SCHEDULE TO SUBPOENA

1. All documents which set forth, contain information about, refer or relate to instances of competition in any phase of the electric utility industry involving: (1) Houston Lighting & Power Company and/or (2) Texas Power and Light Company and/or (3) Texas Electric Service Company and/or (4) Dallas Power and Light Company; or to any communications between Midwest Electric Coop, its agents, or employees and any of the aforementioned entities.

2. All documents provided to or received from the U.S. Department of Justice or the U.S. Nuclear Regulatory Commission or any of their consultants or designated witnesses in connection with this proceeding, or the licensing of any nuclear powered electric generation plant. All documents referring or relating to or setting forth meetings or conversations with any attorney, consultant, or designated witness for or employee of the U.S. Department of Justice or U.S. Nuclear Regulatory Commission.

3. All documents provided to or received from an attorney for or an employee of: (1) the Public Utilities Board of the City of Brownsville, Texas; (2) Tex-La Electric Cooperative, Inc.; (3) the Committee on Power for the Southwest; (4) Tex-La of Texas, Inc.; (5) C. H. Guernsey Corporation; (6) Central and Southwest Corporation and/or any of its subsidiaries including without limitation Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company; (7) any other party to this proceeding; (8) any municipality, cooperative, government agency, or entity which operates or proposes to operate electric generation, transmission, or distribution facilities in any of the States of Texas, New Mexico, Oklahoma, Arkansas, and Louisiana or in the Republic of Mexico; and (9) any designated witness in this proceeding. Any documents referring or relating to or setting forth meetings or conversations with any of the aforementioned entities or individuals.

4. All documents referring or relating to or setting forth evaluations as to the benefits or detriments of ownership, or any other form of participation, in any nuclear powered electric generating plant by any electric utility, municipal system, electrical cooperative, or combination thereof.

5. All documents referring or relating to or setting forth the desirability, feasibility, benefits or detriments of interconnecting the electric systems in the Texas Interconnected Systems and the Electric Reliability Council of Texas and (1) the Southwest Power Pool, and/or (2) Western Systems Coordinating Council.

6. All documents referring or relating to or setting forth any adverse effects resulting from the present lack of interconnections between the Texas Interconnected Systems and/or the Electric Reliability Council of Texas with (1) the Southwest Power Pool and/or (2) the Western Systems Coordinating Council.

7. All documents referring or relating to or setting forth each bulk power supply plan prepared by or for Midwest Electric Coop since January 1, 1973.

8. All documents referring or relating to or setting forth each transmission study developed by or for the Midwest Electric Coop in connection with any of the bulk power supply plans covered in item number 7 above.

9. All documents referring or relating to or setting forth correspondence or contracts between Midwest Electric Coop and any electric utility or electric cooperative concerning the purchase and/or sale of electric power.

10. All documents referring or relating to or setting forth any correspondence or contracts between Midwest Electric Coop and any electric utility or electric cooperative concerning the purchase and/or sale of fuel to be used for the generating of electric power.

Instructions

The period of time for which documents are requested includes the entire period from January 1, 1970 to the date on which documents are made available for inspection and copying by Houston Lighting & Power Company or its representatives.

Houston Lighting & Power Company requests that the Keeper of the Records identify the specific request or requests to which each document is responsive. Where possible, the Keeper of the Records is requested to maintain the integrity of its filing and recordkeeping systems by producing together documents responsive to this subpoena which are found together in the Keeper of the Records' files.

If you claim that any document requested hereunder is privileged, with respect to each such document, please provide the following:

(a) date;

(b) type of document;

(c) identity of author and addresses;

(d) present location and custodian;

(e) any other description necessary to enable the custodian to locate the particular document;

(f) the basis for the claimed privilege; and

(g) a detailed description of the nature of any judicial protection alleged to be necessary to protect the privilege or confidential nature of any such document.

"Documents" means, without limiting the generality of its meaning, all or original (or copies where originals are unavailable) and non-identical copies (whether different from originals by reason of notation made on such copies or otherwise) of all written, recorded or graphic matter, however produced or reproduced, whether or not now in existence, however produced or reproduced, whether or not now in existence, of correspondence, telegrams, notes or sound recordings of any type of conversation, meeting or conference, minutes of directors' or committee meetings, memoranda, inter-office communications, studies, analyses, notes, books, records, reports, summaries and results of investigations and tests, reviews, contracts, agreement, pamphlets, diaries, calendar or diary entries, maps,

graphs, charts, statistical records, computer data, or papers similar to any of the foregoing, however denominated, including preliminary versions, drafts or revisions of any of the foregoing and any supporting, underlying or preparatory material.

RETURN ON SERVICE

Received this subpoena at.....on

.....and on .....at.....

.....served it on the within names.....

.....by delivering a copy to h.....and

tendering to h...the fee for one day's attendance and

the mileage allowed by law.

Date.....19.... By.....

Service Fees

Travel.....$

Services.....$

.....

Total.....$

Subscribed and sworn to before me, a.....

this.....day of.....,19.....

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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TEXAS UTILITIES GENERATING COMPANY et al.	)	Docket Nos. 50-445A 50-446A
	)	
(Comanche Peak Steam Electric Station, Units 1 and 2)	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing:

HOUSTON LIGHTING & POWER COMPANY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS SUBPOENAED FROM THE FILES OF THE SOUTHWEST TEXAS ELECTRIC COOPERATIVE and

HOUSTON LIGHTING & POWER COMPANY'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS SUBPOENAED FROM THE FILES OF THE MIDWEST ELECTRIC COOPERATIVE

were served upon the following persons, by hand*, or by deposit in the United States Mail, first class postage prepaid, this 26th day of March 1980.

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Washington, D.C. 20555

* Michael L. Glaser, Esquire
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