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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

MOTION OF THE DEPARTMENT OF JUSTICE TO COMPEL TEXAS UTILITIES COMPANY TO PROVIDE FULLER RESPONSES TO THE DEPARTMENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

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February 6, 1979

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I. Introduction

The Department of Justice ("Department") respectfully moves this Board for an order, pursuant to 10 C.F.R. §2.740(f), compelling the Texas Utilities Company and its subsidiaries ("TU") to provide fuller responses to the Department's FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS ("Interrogatories"), served November 22, 1978.

On January 12, 1979, the Department was served by mail with the ANSWER OF THE TEXAS UTILITIES COMPANY AND ITS SUBSIDIARIES TO THE FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS FROM THE DEPARTMENT OF JUSTICE ("TU's Responses"). On the same date, the Department was

served by mail with a copy of TUGCO'S OBJECTIONS TO AND MOTIONS FOR PROTECTIVE ORDERS REGARDING CERTAIN OF DEPARTMENT'S INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS ("TUGCO'S Objections"). The Department's response to TUGCO's Objections ("Department's Response") is being filed simultaneously with this motion to compel.

In its Objections, TUGCO specifically took exception to, and requested issuance of a protective order regarding, interrogatories 3, 4, 7, 9, 16, 20, 21, 23 and 25 of the Department's Interrogatories. In its Response to TUGCO's Objections, the Department has discussed in detail its position regarding these interrogatories and has indicated why it believes that TUGCO's objections and request for a protective order should be denied. Rather than repeating those arguments here, the Department respectfully requests that the Board consider the Department's Response to TUGCO's Objections as a part of this motion and that, in addition to granting the relief requested below, the Board compel fuller responses to those interrogatories specifically objected to by TUGCO and addressed in the Department's Response.

II. Argument

A. The Failure of TU to Provide a Single Document in Response to the Department's Interrogatories is Indicative of TU's Failure to Meet its Obligation to Respond

TU's Responses did not contain any documentary material. It is apparently TU's position that since the Department

informally reviewed and received copies of discovery materials made available to parties in West Texas Utilities Company, et al., v. Texas Electric Service Company et al., No. CA-3-76-0633-F (N.D. Tex., Dallas Div.) ("civil case"), no further documents need now be provided. The Department maintains that this assumption is manifestly incorrect.

The materials reviewed by the Department at TU's various offices were materials produced in response to discovery requests made in the pretrial stages of the civil case. While that action is similar to the present proceedings, it is not identical to this proceeding in terms of parties or issues. Moreover, discovery in that case closed On July 15, 1977. TU's Responses do not indicate that TU has searched for materials which came to light or which came into existence after July 15, 1977, or even after the Department conducted its informal document review this past Fall.

In addition, several new areas of discovery were initiated in the Department's Interrogatories. For example, discovery in the civil case was not concerned with possible monopolization or with TU's relationships with electrical

cooperatives and/or municipal systems. Again, there is no indication of any searches having been conducted in existing discovery materials or in other files to locate materials relating to these "new" subjects.

It is simply inconceivable that not one document has been created or come to light subsequent to the close of discovery in the civil case, or that no documents whatsoever exist which relate to areas with which the civil case was not concerned. Therefore, the Department respectfully requests that the Board direct TU to undertake a prompt and thorough file search. Moreover, the Department requests that if, at the conclusion of this search no additional documents are found, counsel for TU be directed to file with the Board an affidavit describing the efforts undertaken to discharge this responsibility.

B. TU's Laconic and Incomplete Response to Interrogatory 12 is Not Acceptable

The Department's twelfth interrogatory states:

> (a) the report is incorrect in assessing the amount of cost necessary to interconnect ERCOT and SWPP as being $31,175,000 (p. 32);
>
> (b) The report is incorrect in asserting: "'Internal' load flows for single contingency loss of the largest generating unit in South Texas (South Texas Project 1,250 MW unit) and single contingency loss of the largest generating unit in North Texas (Comanche Peak 1,130 MW unit) were made for ERCOT interconnected with SWPP and the rest of the eastern interconnected systems group for 1982. No over loads or adverse effects were observed" (p. 28);

(c) if the answer to (a) or (b) is affirmative, and HL&P or TU does reject that finding of the study, explain the basis for that rejection;

(d) provide all documents which relate to (a)-(c) above. (Interrogatories at 13-14).

TU's response states:

12(a) TU believes the report is incorrect.

12(b) TU cannot determine the meaning of the report in this respect.

12(c) See answers to Interrogatories Nos. 4, 6 and 14.

12(d) Documents requested by this inquiry have been made available for inspection and copying, and all documents designated to be copied have been delivered to the Department of Justice. (TU's Responses at 8).

Interrogatory 12 poses several questions based upon a 1978 study completed by the Fort Worth regional office of the Federal Energy Regulatory Commission. That study focused upon some aspects of possible interconnection between ERCOT and the Southwest Power Pool. The interrogatory asks TU to assess several statements made in that study, and to explain any disagreement TU, its engineers and/or its consultants have with the study's findings.

Response 12(b) states: "TU cannot determine the meaning of the report in this respect." It is virtually impossible to understand what TU means by this response. A complete quote from the study is given, though inadvertently

the word "internal" was substituted for "inertial," and the page of the study from which the quote was taken is identified. There is no justification for this failure to respond on the part of TU.

Similarly, part (c) of this interrogatory asks for an explanation as to why any of the study's findings have been rejected by TU. TU's response is limited to citing answers to other Department interrogatories which have little, if any, relevance to the questions posed in this interrogatory.

The Department maintains that it is entitled to have TU make a good faith effort to study the questions posed in interrogatory 12 and to respond with an appropriate degree of conscientiousness and specificity. TU certainly possesses ample engineering expertise such that performing this task would not be burdensome. The Department would, therefore, request that TU be directed to respond to Interrogatory 12 .

C. TU's Response to Interrogatory 14 Fails to Answer the Question Asked

The Department's fourteenth interrogatory reads:

> State whether, prior to the May 4, 1976 disconnection, HL&P and/or TU made, commissioned or reviewed any analysis, study or evaluation as to possible adverse effects upon wholesale, industrial and residential consumers of electrical power throughout Texas which would result from HL&P and TU disconnecting from all other Electrical Utilities with which they were interconnected. If so, state the conclusion of any such analysis, study or evaluation, and by whom, when and under what circumstances it was made. Provide all documents relating to such analysis, study or evaluation. (Interrogatories at 14).

To which TU answered:

> Based upon the facts, circumstances and available alternatives, the TU Companies believe that an intrastate mode of operation has been and continues to be in the best interests of their customers. This conclusion has been fortified by repeated analysis over the years of what mode of operation is in the best interest of their customers. In each instance, the TU Companies have concluded that operating in an intrastate mode produces for their customers the most reliable and economical electric service. The adverse consequences from disconnection on May 4, 1976, were far less than the adverse consequences of remaining connected. See the depositions and testimony of Messrs. Austin, Hulsey, Marquardt and Scarth in West Texas Utilities Company, et al v. Texas Electric Service Company, et al, Id.
>
> Documents requested by this inquiry have been made available for inspection and copying, and all documents designed to be copied have been delivered to the Department of Justice. (TU's Responses at 8).

This interrogatory is one of the least extensive and complicated of those posed by the Department to TU. It asks, in a most direct manner, if a particular kind of study has been performed by TU. The response tendered by TU is anything but direct. TU's response does not state whether this type of study was ever undertaken, and, if so, when. Instead, TU merely states an unsubstantiated conclusion that intrastate operation is in the best interest of its customers. The central focus of this interrogatory remains unanswered.

Furthermore, even if this answer were responsive, it still would not comply with 10 C.F.R. §2.740b(b), which mandates that interrogatories shall be "answered separately and fully in writing." Merely stating a conclusion, in this instance that intrastate operation substantially benefits TU consumers, is not sufficient.

Detailed and complete explanations as to why and how this conclusion was reached must also be included. The Department requests that the Board direct TU to furnish a complete answer to this interrogatory.

D. The Mere Citation to Testimony, Depositions, And Other Documentary Materials, Without Identification of Pertinent Passages by Page Number, Constitutes An Insufficient Response to the Department's Interrogatories

In responding to many of the Department's interrogatories, see, e.g., TU's Responses to interrogatories 2 (a) and (b), 3(a), 4, 7, 9, 14, 15, 21, 24 and 25, TU has employed a procedure to which the Department strenuously objects. In each of referenced responses, TU purports to answer the Department's interrogatory by merely citing trial testimony and/or depositions in the civil case, without so much as indicating relevant passages and/or pages. Thus, no effort has been made to discharge TU's obligation to provide complete and full responses to the Department's Interrogatories. Similarly inadequate references are made to Texas Public Utility Commission proceedings, and Security and Exchange Commision proceedings.

There has been a vast amount of testimony, and documentary material generated by other related proceedings, particularly the civil case. Therefore, merely to list a number of individuals whose testimony and/or depositions should be consulted, without specifically identifying the pages which are pertinent, frustrates rather than facilitates the discovery process.

For these reasons, the Department respectfully requests that this Board direct TU to complete its initial responses to the above identified interrogatories by identifying those portions of referenced testimony, depositions, and /or transcripts which they are relying upon. Only after that is done will the Department be in a position to evaluate the adequacy of TU's responses.

III. Conclusion

For all of the reasons discussed in the Department's Response to TUGCO's Objection's and incorporated by reference herein, the Department respectfully requests that the Board compel responses to interrogatories 3, 4, 7, 9, 16, 20, 21, 23 and 25. The Department further requests that TU be compelled to provide fuller answers to interrogatories 12 and 14 and that it be directed to search all of its document repositories, for all documents which respond to the Department's Interrogatories but which have not yet been produced. If, at the conclusion of this search, no additional relevant documents are found, the Department respectfully requests that TU's counsel be instructed to file with the Board an affidavit outlining the search. Finally, for the reasons stated above, the Department requests that TU be compelled, at a minimum, to cite pertinent sections

and specific page references when it refers to testimony, depositions, and/or documentary materials from the civil case in responding to the Department's Interrogatories.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing MOTION OF THE DEPARTMENT OF JUSTICE TO COMPEL TEXAS UTILITIES COMPANY TO PROVIDE FULLER RESPONSES TO THE DEPARTMENT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS has been made on the following parties listed hereto this 6th day of February, 1979, by depositing copies thereof in the United States mail, first class, postage prepaid.

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