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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

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

DEPARTMENT OF JUSTICE RESPONSE TO MOTION OF HOUSTON LIGHTING & POWER COMPANY TO COMPEL THE DEPARTMENT OF JUSTICE TO PROVIDE INTERROGATORY ANSWERS WITH RESPECT TO THE PROPOSED EXPERT TESTIMONY OF CARL STOVER

The Department of Justice ("Department") hereby submits its Response to Motion of Houston Lighting & Power Company to Compel the Department to Provide Interrogatory Answers with Respect to the Proposed Expert Testimony of Carl Stover ("HL&P's Motion"), dated February 19, 1980.

On February 4, 1980, the Department filed its Response to Fourth Set of Interrogatories and Requests for Production of Documents from Houston Lighting & Power Company to Antitrust Division, attached hereto as Exhibit A. The Department has no objection to providing its complete knowledge regarding those interrogatories, however, the Department presently has no further information to provide at this time other than that set forth herein.

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As HL&P knows, Carl N. Stover is an electrical and industrial engineer, employed by C. H. Guernsey, Inc., Oklahoma City. 1/ Mr. Stover represents a number of cooperatives and municipal systems in Kansas, Colorado, Oklahoma and Texas. 2/ Specially, Mr. Stover has been commissioned by a group of cooperatives which purchase power from West Texas Utilities, known as the Mid Texas Generation and Transmission Group 3/ and by cooperatives which purchase power from one of the Texas Utilities Company subsidiaries to perform different engineering services from time to time. In that regard, the Department anticipated that Mr. Stover would be able to provide testimony relevant to these proceedings and therefore the Department listed Mr. Stover as a potential fact witness in its First Response to the Second Set of Interrogatories and Requests for Production of Documents from Houston Lighting & Power Company to Antitrust Division, U.S. Department of Justice, dated April 3, 1979. HL&P and other parties to these proceedings thereafter deposed Mr. Stover on July 24, 1979, to ascertain his knowledge regarding these proceedings.

1/ Deposition of Carl N. Stover ("Stover"), dated July 24, 1979, p. 6.

2/ Stover at pp. 7-10.

3/ Stover at p. 10.

The Department has no relationship or understanding with Mr. Stover as to the substance of his potential testimony other than what was revealed at his July 24, 1979, deposition. The Department has not sent any documents to Mr. Stover to review in connection with his proposed testimony subsequent to his deposition. A search of the Department's files reveals only one letter from Mr. Stover to the Department, dated April 23, 1979, attached hereto as Exhibit B. Following the deposition of Mr. Stover on July 24, 1979, Mr. Stover provided the Department with two binders which contained answers by his clients to a questionnaire prepared by the Department of Justice. These documents have been produced to HL&P.

In the future, if additional correspondence or documents are exchanged between Mr. Stover and the Department, the Department will make copies of such materials available to HL&P, pursuant to the Board's Order relating to expert witnesses.

Rule 702 of the Federal Rules of Evidence provides:

> "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or determine a fact in issue, <u>a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise</u>." (Emphasis added)

By virtue of Mr. Stover's education, professional background and particular knowledge of some of the issues in these proceedings, his potential testimony must be viewed in

the context of an expert. Therefore, the Department specifically designates Mr. Stover as both a potential fact and expert witness.

Respectfully submitted,

Susan Braden Cyphert

Susan Braden Cyphert
Attorney, Energy Section
Antitrust Division
U.S. Department of Justice
Telephone: (202-724-6667)

Washington, D. C.
March 5, 1980

Exhibit B

CONSULTING ENGINEERS & ARCHITECTS
NATIONAL FOUNDATION WEST BUILDING
3555 NORTHWEST 58TH STREET
OKLAHOMA CITY 73112
(405) 947-5515

April 23, 1979

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Ms. Judith L. Harris, Attorney
Energy Section, Antitrust Division
United States Department of Justice
Washington, D.C. 20530

Reference: DAK:JLH
60-415-105

Dear Judy:

I know that you are trying to coordinate meetings with a number of different cooperative groups relative to the Texas Nuclear projects. Since I last talked with you, a meeting has been set on Friday, May 11th, with a number of the WTU systems. The purpose of the meeting is to discuss some work that I am doing for the group. I asked Don Hart if it would be alright to mention to you the possibility of your visiting with the managers after we have completed our meeting. He said that would be fine and would just leave it up to you. I would imagine that I would be finished by noon, and perhaps you would want to meet with them during lunch or right after lunch. I do not believe that all of the managers will be there; I think Don indicated that only the executive committee of the WTU Power Capacity Planning Procurement Group would be present. You can check with Don as to who will attend (915) 928-4715.

Judy, I will leave it up to you as whether you want to try to meet with the group. The meeting will take place in Merkel, Texas, which is just west of Abilene. I will fly into Abilene between 9:00 and 9:30 that morning and either one of the cooperative managers will pick us up or we will rent a car and drive over to Merkel. You would be welcome to go with us if you wish.

Sincerely,

C. H. GUERNSEY & COMPANY

Carl

Carl N. Stover, Jr., P.E.

CNS/jt

cc: Don Hart

12 APR 27 1979
ANTITRUST

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Department of Justice Response to Motion of Houston Lighting & Power Company to Compel the Department of Justice to Provide Interrogatory Answers with Respect to the Proposed Expert Testimony of Carl Stover has been made on the following parties listed hereto this 5th day of March, 1980, by depositing copies thereof in the United States mail, first class, postage prepaid.

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Susan B. Cyphert

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Department of Justice

Exhibit A

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RESPONSE OF DEPARTMENT OF JUSTICE TO FOURTH SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS FROM HOUSTON LIGHTING & POWER COMPANY TO ANTITRUST DIVISION, U.S. DEPT. OF JUSTICE

The Department of Justice ("Department") hereby submits its Response to Interrogatories propounded by Houston Lighting & Power Company ("HL&P"). 1/ The answers and information provided herein are complete to the Department's information and belief as of February 4, 1980. The Department, however, reserves its right pursuant to Section 2.740(e) of the Nuclear Regulatory Commission's Rules of Practice to supplement or amend these Responses prior to trial to include any additional information which may become available.

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1/ Fourth S r Production of Document ny to Antitrust Division, U y 21, 1980.

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