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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

HOUSTON LIGHTING & POWER CO., et al.,	)	NRC Docket Nos. 50-498A
	)	50-499A
(South Texas Project, Units 1 & 2)	)	
	)	
_____	)	
TEXAS UTILITIES GENERATING CO., et al.,	)	NRC Docket Nos. 50-445A
	)	50-446A
(Comanche Peak Steam Electric Station,	)	
Units 1 & 2)	)	

RESPONSE TO MOTION TO COMPEL OF HOUSTON LIGHTING  
AND POWER COMPANY AND MOTION FOR PROTECTIVE ORDER  
BY THE PUBLIC UTILITIES BOARD OF THE CITY OF  
BROWNSVILLE, TEXAS

The Public Utilities Board of the City of Brownsville, Texas ("Brownsville") hereby responds to the Motion to Compel Production of Documents and Deposition Testimony by the Public Utilities Board of the City of Brownsville, Texas, and its Expert Witness, Dr. John W. Wilson, filed April 3, 1980, by Houston Lighting and Power Company ("HL&P").

The Motion arose because counsel for Brownsville instructed its potential expert economic witness for antitrust issues, Dr. John W. Wilson, during his deposition on March 24-26, 1980, not to answer questions about his work on pending District Court and N.R.C. litigation on behalf of certain Florida Cities.<sup>1/</sup>

<sup>1/</sup> The City of Gainesville, the Lake Worth Utilities Authority, the Utilities Commission of New Smyrna Beach, the Sebring Utilities Commission, and the Cities of Alachua, Bartow, Ft. Meade, Homestead, Key West, Kissimmee, Lake Helen, Mt. Dora, Newberry, St. Cloud, Starke, and Tallahassee, Florida.

Dr. Wilson is a potential expert witness in that proceeding; counsel for HL&P (Lowenstein, Newman, Reis, Axelrad & Toll) represent the defendant (Florida Power & Light) in that proceeding, and counsel for Brownsville represent the plaintiffs in that proceeding. Discovery of Dr. Wilson's work in that proceeding has not yet been sought, pursuant to the Federal Rules of Civil Procedure.

Brownsville does not concede that HL&P is entitled, as a matter of law and of the principles applied by the Licensing Board in this proceeding, to discover Dr. Wilson's current work related to the Florida litigation.<sup>1</sup>/

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FOOTNOTE CONTINUED FROM PREVIOUS PAGE

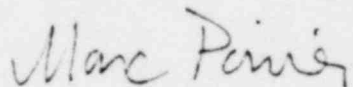
The civil suit is The Fort Pierce Utilities Authority of the City of Fort Pierce, et al. v. Florida Power & Light Company, Civil Action No. 79-5101 - Civ JLK (S.D. Fla.). The N.R.C. litigation is Florida Power and Light Co. (St. Lucie Plant, Unit No. 2), NRC Docket No. 50-389A.

<sup>1</sup> The Board recently ordered (March 31, 1980) protection of an analysis prepared by Dr. Lerner, the NRC's expert economic witness, in connection with Consumers Power (Midland Plant, Units 1 & 2), NRC Docket Nos. 50-329A, 50-330A. Although the basis of the privilege of Dr. Lerner's analysis in Midland was settlement rather than attorney-client or work product, Dr. Wilson's work in the Florida case should be entitled to similar protection against discovery at this time.

Moreover, HL&P has not shown any compelling need for this information about Dr. Wilson's work (as opposed to his theory about the existence of nuclear power markets) that would counterbalance the legitimate interest of the Florida Cities in protection of work product and, to the extent applicable, attorney-client privilege.

For the above reasons, the Public Utilities Board of the City of Brownsville, Texas, requests the Board to grant HL&P's Motion to Compel only upon the issuance of a protective order in the form submitted by certain Florida Cities.

Respectfully submitted,



Marc R. Poirier  
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City of Brownsville, Texas

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April 9, 1980

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that I have caused copies of the foregoing RESPONSE TO MOTION TO COMPEL OF HOUSTON LIGHTING AND POWER COMPANY AND MOTION FOR PROTECTIVE ORDER BY THE PUBLIC UTILITIES BOARD OF THE CITY OF BROWNSVILLE, TEXAS to be made on the following parties listed hereto this 10th day of April 1980, by depositing copies thereof in the United States mail, first class, postage paid.

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