

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

JOINT APPLICATION OF THE DEPARTMENT OF JUSTICE AND
THE NRC STAFF FOR ISSUANCE OF SUPBOENAS AND LIMITED
EXTENSION OF TIME FOR COMPLETION TO EXPERT TESTIMONY

The Department of Justice and the NRC staff ("Movants") pursuant to 10 CFR §2.720 hereby make application for the issuance of subpoenas, identified hereinafter and attached to this application.

The subpoenas call for the giving of testimony by expert witnesses, who are also officers of the particular Applicant concerned. As the Board ruled in its oral Order in the conference call with the parties on January 25, 1980, while the depositions of expert witnesses scheduled in March should relate to expert testimony, the parties cannot be precluded from propounding questions to elicit responses of a factual nature where the expert is also a corporate officer of the Applicant and aware of material and relevant facts concerning the issues in these proceedings.

While the deposition of Mr. E. D. Scarth of Texas Utilities Generating Company, listed in this application, is scheduled within the close of expert witness discovery on March 28, 1980, Movants seek a limited extension of the deadline for expert witness discovery to depose Mr. D. E. Simmons of Houston Lighting and Power Company on or before April 2, 1980. 1/

Subpoenas for Deposition

1. E. D. Scarth, Texas Utilities Generating Company
2. D. E. Simmons, Houston Lighting and Power Company

Respectfully submitted,

Michael Blume/ptc
Michael Blume

Susan B. Cyphert
Susan B. Cyphert

Frederick Chanania/ptc
Frederick Chanania

David A. Dopsovic/ptc
David A. Dopsovic

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Energy Section
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U.S. Department of Justice
Washington, D.C. 20530
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1/ Movants may be required to re-depose Mr. Simmons prior to his testimony at hearing, due to Movants inability to obtain studies by Houston Lighting and Power Company ("HL&P") or its consultants regarding the impact of interstate interconnections upon HL&P's system, which Mr. Simmons may rely upon in his testimony. (See correspondence listed in appendix attached hereto.)

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of) HOUSTON LIGHTING AND POWER) COMPANY, et al. (South Texas) Project, Units 1 and 2)) TEXAS UTILITIES GENERATING) COMPANY (Comanche Peak Steam) Electric Station, Units 1) and 2))	Docket Nos. 50-493A 50-499A Docket Nos. 50-445A 446A
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing JOINT APPLICATION OF THE DEPARTMENT OF JUSTICE AND THE NRC STAFF FOR ISSUANCE OF SUPBOENAS AND LIMITED EXTENSION OF TIME FOR COMPLETION TO EXPERT TESTIMONY has been made on the following parties listed hereto this 28th day of February 1979, by depositing copies thereof in the United States mail, first class, postage prepaid, and where asterisks appear, service has been made by hand.

Marshall E. Miller, Esquire* Chairman Atomic Safety & Licensing Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Atomic Safety and Licensing Appeal Board Panel U.S. Nuclear Regulatory Commission Washington, D.C. 20555
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Samuel J. Chilk, Secretary Office of the Secretary of the Commission U.S. Nuclear Regulatory Commission Washington, D.C. 20555	Chase R. Stephens, Secretary* Docketing and Service Branch U.S. Nuclear Regulatory Commission Washington, D.C. 20555
	Jerome Saltzman Chief, Antitrust and Indemnity Group U.S. Nuclear Regulatory Commission Washington, D.C. 20555

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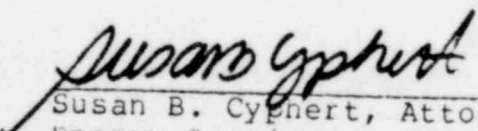
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Mr. G. Holman King
West Texas Utilities Co.
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Abilene, Texas 79604

w. N. woalsey, Esquire
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Susan B. Cybert, Attorney
Energy Section
Antitrust Division
Department of Justice

BAKER & BOTTS
 ONE SHELL PLAZA
 HOUSTON, TEXAS 77002

H-1766-10-G

February 19, 1980

Mr. Michael Blume
 Counsel for M.R.C. Staff
 United States Nuclear
 Regulatory Commission
 Washington, D. C. 20555

Dear Mr. Blume:

In response to your letter of February 11, 1980, our understanding of the conference call is that we were only ordered to respond to the request for production of documents in connection with the Dow lignite deposits. We have responded to that request. Any discussion during that conference call of a protective order was in the context of representations by Mr. Dopsovic that Dow had no problem in producing the documents under a protective order. It is our understanding that this representation has proved to be an error. Houston is, however, still willing to abide by whatever agreement the Department may reach with Dow on this question.

I have sent you copies of the documents requested in the second paragraph of your letter as well as the maps you have requested. With respect to the four numbered items which you list as being requested during the deposition of Mr. Simmons, I am enclosing the documents requested in Item No. 3, i.e. Mr. Simmons' notes of the conference. I do not remember the requests noted in Items No. 2 and 4. I do not know what documents you have in mind other than the ones that have already been produced in response to your interrogatories. With respect to Item No. 1, we have been in the process of moving our documents to Washington, and as a result of some logistical problems, I have been unable to locate the requested documents. As soon as I do locate them, copies will be sent to you.

Very truly yours,

J. Gregory Copeland
 Attorney for Houston Lighting
 & Power Company

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

February 11, 1980

EXPRESS MAIL

J. Gregory Copeland, Esq.
Baker and Botts
3000 One Shell Plaza
Houston, Texas 77002

HAND DELIVER

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

Re: Houston Lighting & Power Company,
et al., (South Texas Project,
Units 1 and 2), Docket Nos. 50-498A
and 50-499A;
Texas Utilities Generating Company,
et al., (Comanche Peak Steam Electric
Station, Units 1 & 2, Docket Nos.
50-445A and 50-446A

Gentlemen:

On January 25, 1980 I confirmed Staff's belief that there are outstanding discovery requests to HL&P requiring the production of documents relating both to HL&P's purchase or lease of lignite deposits from Dow Chemical and Houston's negotiations for generation additions. In the conference call of January 25, 1980, Chairman Miller ordered HL&P to produce documents relating to the HL&P/Dow lignite transaction within one week, that is, until February 1, 1980, or come forward within that time with a proposed protective order to shield the confidentiality of those documents. Staff has, to date, received neither the documents in question nor any proposed protective order. Instead, Staff received a letter dated February 6, 1980, which explains that HL&P's contract with Dow prohibits disclosure of this information. This does not constitute compliance with Chairman Miller's order.

The second issue discussed in the conference call of January 25th related to negotiations between HL&P and another unidentified party regarding a joint generating unit. In my letter of January 25, 1980, I set forth the Staff's position which is and has been that discussions and documents regarding Houston's plans and negotiations for energy and capacity purchases and additions are the subject of prior discovery requests by the Staff and are subject to

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a continuing obligation on Houston to fulfill the requests. Your offer of February 6th was to respond to Staff's request for documents relating to Houston's negotiations and considerations on generation additions two weeks from the date your letter was written. This would be nearly four weeks subsequent to the conference call with Chairman Miller. The Staff does not consider this as adhering to Chairman Miller's order, which accommodated your request to maintain the confidentiality of those negotiations in a "critical" stage. Thus, if Houston has any documents relating to its considerations regarding energy purchases or capacity additions, it is under a continuing obligation to produce those documents as well, and must do so immediately.

I hope that we can quickly resolve these problems among ourselves, as factual discovery is rapidly drawing to a close. Thus I hope to receive by February 13th the documents responsive to Staff's outstanding requests, or a proposed protective order.

This will also confirm Staff's requests of February 7, 1980, made to counsel at the deposition of Mr. D.E. Simmons, for:

(1) Document Nos. 207, 208, 238, 242, and 260 identified in Appendix C to the July 11, 1979 "Motion of the Department of Justice to Compel Production by Houston Lighting & Power Company of Certain Documents Which It Contends Are Privileged." Counsel represented that these documents have either been produced or will be produced.

(2) All documents relating to the determination, estimation, or comparison of costs, benefits, or other factors pertaining to interconnections, or possibly interconnecting TIS with SWPP, including all cost estimates for D.C. interconnections. Such documents were requested by Staff in Interrogatory No. 3 of Staff's "Third Set of Interrogatories and Requests for Production of Documents to HL&P," dated November 26, 1979.

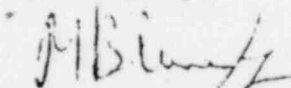
(3) Mr. D.E. Simmons' notes prepared for his presentation in October 1979 regarding direct current interconnections between TIS and SWPP. This request is in response to your offer at Mr. Simmons' deposition of February 7 to produce those notes.

(4) Any analyses, evaluations, or studies relating to Houston's consideration of the purchase of energy or capacity out of TU's Forest Grove Unit. Staff's Interrogatory No. 3(d) of its "Third Set" requests this type of information.

I will take this opportunity as well to renew, once again, my requests for a current, full-sized map showing HL&P's service area and dual or multiple certification areas, as well as for full-sized, color copies of maps showing HL&P's current and planned transmission facilities 69 kv and above.

Thank you for your continuing cooperation and assistance.

Yours truly,



Michael B. Blume
Counsel for NRC Staff

cc: Service List

United States of America

NUCLEAR REGULATORY COMMISSION



In the matter of:

HOUSTON LIGHTING AND POWER
COMPANY, et al. (South Texas
Project, Units 1 and 2)

TEXAS UTILITIES GENERATING COMPANY
(Comanche Peak Steam Electric
Station, Units 1 and 2)

DOCKET NO. 50-498A
50-499A
50-445A
50-446A

TO

D. Eugene Simmons
Vice President of
Houston Lighting & Power Co.
P.O. Box 1700
Houston, Texas 77001

YOU ARE HEREBY COMMANDED to appear
at Room 12th Floor, 515 Rush Avenue

in the city of Houston, Texas
on the 31st day of March 19 80 at One o'clock P.M.
to testify

in the above entitled action (and thereafter from day to day,
including the 1st and 2nd days of April, if necessary).

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY _____

Susan B. Cyphert
David A. Dopsovic

Attorneys for Antitrust Division
United States Department of Justice
Washington, D.C. 20530
Telephone (202) 724-6667...
(202) 724-7937

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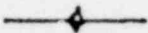
10 C.F.R. 2.720 (f)

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 sub-
poena 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 sub-
poena if it is unreasonable or requires evidence
not relevant to any matter in issue, or (2) con-
dition denial of the motion on just and reasonable
terms.

United States of America

NUCLEAR REGULATORY COMMISSION



In the matter of:

HOUSTON LIGHTING AND POWER
 COMPANY, et al. (South Texas
 Project, Units 1 and 2)

TEXAS UTILITIES GENERATING COMPANY
 (Comanche Peak Steam Electric
 Station, Units 1 and 2)

DOCKET NO. 50-498A
 50-499A
 50-445A
 50-446A

TO

E. D. Scarth
 Texas Electric Service Co.
 P.O. Box 970
 Fort Worth, Texas 76101

YOU ARE HEREBY COMMANDED to appear
 at Room 8C6, 1100 Commerce Street

in the city of Dallas, Texas
 on the 27-28th day of March 1980 at Nine o'clock A.M.
 to testify

in the above entitled action (and thereafter from day to day,
 if necessary).

BY ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD

BY _____

Susan B. Cyphert
 David A. Dopsovic

Attorney for Antitrust Division
 United States Department of Justice
 Washington, D.C. 20530
 Telephone (202) 724-6667...
 (202) 724-7937

.....19.....

POOR ORIGINAL

10 C.F.R. 2.720 (f)
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 at or before the time specified in the subpoena
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presiding officer or, if he is unavailable, the
 Commission may (1) quash or modify the sub-
 poena if it is unreasonable or requires evidence
 not relevant to any matter in issue, or (2) con-
 dition denial of the motion on just and reasonable
 terms.