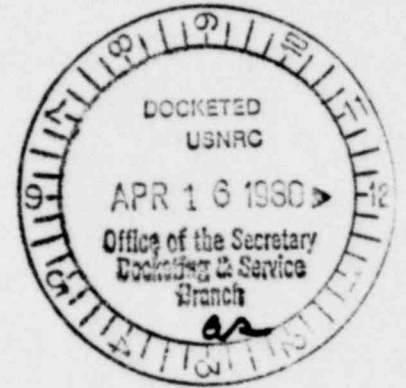


UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



ATOMIC SAFETY AND LICENSING APPEAL BOARD

Alan S. Rosenthal, Chairman
Michael C. Farrar
Thomas S. Moore

In the Matter of)
HOUSTON LIGHTING & POWER COMPANY,)
 et al.)
(South Texas Project, Units 1 and 2))
TEXAS UTILITIES GENERATING COMPANY,)
 et al.)
(Comanche Peak Steam Electric Station,)
 Units 1 and 2))

Docket Nos. 50-498A
50-499A

Docket Nos. 50-445A
50-446A

ORDER

April 15, 1980

We have before us the March 12, 1980, petition for directed certification of the Texas Utilities Generating Company and the similar March 13 petitions of both the Houston Lighting and Power Company and the Central and South West Corporation. All three petitions seek reversal of a March 7 Licensing Board order requiring the petitioners to produce certain documents, all which were allegedly generated

solely for purposes of settlement negotiations related to the underlying antitrust controversy. The Department of Justice and NRC staff, which sought the documents below, have opposed the petitions for directed certification.

We stayed the challenged ruling pending our further order and, on March 27, heard oral argument on the matter. Thereafter, we provided all parties an opportunity to file supplemental memoranda. In addition, we ordered the parties to file responses to a motion of the Public Utilities Board of the City of Brownsville -- not a party before us -- for leave to file an affidavit concerning the status of the settlement negotiations. We now grant the motion of Brownsville and accept the affidavit for filing.

The requests for certification seem to present two central questions for resolution. The first is whether there is a general settlement privilege that might shield from discovery the documents in issue here. Second, assuming no such protection, are some or all of the documents nonetheless immune from discovery by reason of certain earlier rulings by the Board below.

Neither question is free from difficulty. We have considerable doubt whether, as a general matter, there is any settlement privilege which might assist petitioners' present endeavor to resist discovery. Moreover, we are skeptical that, in fact, petitioners relied upon the Licensing Board's 1979 rulings in creating all of the materials which are sought to be discovered. This skepticism stems from the nature of those materials, the likely timing of their creation, and the tenor of the June 1, 1979 remarks of the Licensing Board in then addressing the discovery dispute.

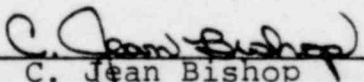
Very recent supervening developments, however, counsel against acting upon the petitions at this time. On April 10, following a conference with the parties the previous day, the Licensing Board deferred the pretrial and trial schedule for 30 days to accommodate ongoing settlement negotiations. In light of the new schedule and the representations made by the parties below concerning the status and prospects of settlement, we believe the wisest course would be for us to avoid altering the status quo at this point. Moreover, should a settlement be consummated,

the thorny questions presented by the petitions might well become moot. Accordingly, we leave in effect until further notice our March 13 order staying the Licensing Board's challenged ruling. When the parties next report to the Licensing Board on the status of settlement, copies shall be filed with us.

In this connection, we wish to urge all parties to take the brief 30-day hiatus from the pressure of impending trial to pursue vigorously settlement of the antitrust proceeding. A settlement voluntarily reached is far preferable to a lengthy trial followed by an involuntary resolution. We are confident that the pending discovery dispute will not be allowed to impede the achievement of that end.

It is so ORDERED.

FOR THE APPEAL BOARD


C. Jean Bishop
Secretary to the
Appeal Board