

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

THE ATOMIC SAFETY AND LICENSING BOARD

Sheldon J. Wolfe, Esquire, Chairman
Dr. E. Leonard Cheatum, Member
Gustave A. Linenberger, Jr., Member



In the Matter of)
HOUSTON LIGHTING AND POWER COMPANY)
(Allens Creek Nuclear Generating)
Station, Unit 1))

Docket No. 50-466 CP

PROTECTIVE ORDER
(June 27, 1980)

On January 12, 1980, Intervenor, John F. Doherty, filed a Motion to Subpoena That Document Known As The "Reed Report" from General Electric, Applicant's Vendor.

In a letter dated January 17, 1980, Applicant's counsel advised that General Electric and Mr. Doherty had authorized Applicant to represent to the Board that the issuance of a subpoena was unnecessary in light of their agreement to engage in informal negotiations for the purpose of reaching a settlement agreement on the inspection of the "Reed Report". Thus, on January 21, 1980, the Motion was denied without prejudice to renew in the event the settlement negotiations were unsuccessful.

The Board has been advised by counsel for Houston Lighting and Power Company on June 11, 1980 that negotiations have been substantially successful and that an agreement on how to proceed has been reached. On said date, Applicant filed a Motion For The Issuance Of A Protective Order.

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General Electric has agreed to allow Mr. Doherty to inspect the following information subject to Mr. Doherty executing an appropriate protective agreement:

- a. The "list of 27 so-called safety-related items" from the Reed Report provided for the sole purpose of determining that GE and HL&P have correctly decided which of the items are relevant to Mr. Doherty's admitted contentions;
- b. Those items from the above list which are relevant to Mr. Doherty's admitted contentions; and
- c. A current status report on each of the relevant items.

Both Houston Lighting and Power Company and General Electric Company are willing to produce this information to Mr. Doherty for his inspection. However, General Electric believes that the information is of a confidential or proprietary nature, the release or disclosure of which to third parties could seriously impair General Electric Company's relationships with its competitors. Mr. Doherty has not challenged this assertion and he has advised that he has no objection to the entry of a Protective Order protecting the confidentiality of the information.

The Board finds the proposed settlement to be entirely reasonable and acceptable. Accordingly, we grant Applicant's Motion and issue the instant Order modifying Applicant's proposed Protective Order, which had been attached to the Motion For The Issuance Of A Protective Order, in the interest of obtaining the document without further delay. In so doing, however, we explicitly decline to find that Applicant,

upon behalf of the General Electric Company, or General Electric itself, has met the burden of showing that the document in question and the information contained therein are confidential or proprietary in character and are entitled to protection from public disclosure under the standards set forth in Kansas Gas and Electric Company (Wolf Creek Nuclear Generating Station, Unit No. 1), ALAB-327, 3 NRC 408, 416-18 (1976).

NOW THEREFORE, pursuant to 10 C.F.R. §§ 2.740(c) and 2.790,

1. IT IS HEREBY ORDERED that the scope of discovery of (and portions thereof or relating thereto) prepared under the direction and supervision of Dr. Charles Reed of General Electric Company in 1975 ("The Reed Report") shall be limited to protect against disclosure of the information contained in the report to the general public.

2. IT IS HEREBY FURTHER ORDERED THAT, subject to paragraphs 3 and 4 of this Order, those items on the "list of 27 so-called safety-related items", which are relevant to Intervenor Doherty's contentions shall be identified and a current status report on those items shall, in accordance with the procedure specified in paragraph 3 of this Order, be produced for Mr. Doherty's inspection at General Electric's offices in Houston, Texas at a mutually convenient time.

3. IT IS HEREBY FURTHER ORDERED that the discovery granted herein be conditioned as follows:

a. The foregoing information shall not be disclosed to any person other than Mr. Doherty in accordance with the protective agreement contained in Attachment A hereto. Mr. Doherty shall have the reserved right to seek an amendment to the agreement allowing him a photocopying privilege if, after his inspection, it

is shown to be essential for the preparation of testimony, documentary evidence, cross-examination, or other legitimate evidentiary purpose pertaining to his existing contentions.

b. If the Commission or the Board orders that access to or dissemination of the information shall be made to persons not included in paragraph 3(a) above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and obligations arising from this Order and such persons shall be considered subject to it.

c. Any portion of a transcript in connection with this proceeding containing the information shall be examined in camera and shall be bound separately and filed under seal. If said information is included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter, taking the deposition to bind such portions and separately label them "GENERAL ELECTRIC'S BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER". Before a court reporter receives any such information, he or she shall first read this Order and shall have agreed in writing to be bound by the terms thereof.

d. All information shall be accorded confidential treatment within the meaning of 5 U.S.C. 552(b)(4) and 18 U.S.C. 1905, subject to a final Commission ruling, after notice, under 10 C.F.R. Section 2.790.

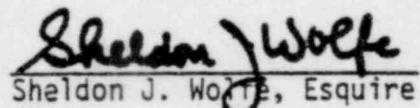
e. If this information is disclosed to any person other than in the manner authorized by this Protective Order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of counsel for General Electric Company and Houston Lighting and Power Company and the presiding officer and, without prejudice to other rights and remedies of General Electric Company and Houston Lighting and Power Company, make every effort to prevent further disclosure by it or by the person who was the recipient of such information.

f. Upon final termination of this proceeding, each person that is subject to this Order shall assemble and return to counsel for Houston Lighting and Power Company all such information, including notes.

4. IT IS HEREBY FURTHER ORDERED that in the event Intervenor Doherty needs to utilize any of the information discovered pursuant to this Protective Order during the evidentiary hearing in this proceeding, the information shall only be disclosed in camera under the conditions set forth in paragraph 3 hereof and the Protective Agreement attached hereto and the transcript of such portion of the evidentiary hearing shall be sealed.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD


Sheldon J. Wolfe, Esquire
Chairman

Dated at Bethesda, Maryland
this 27th day of June, 1980.

ATTACHMENT A

AGREEMENT REGARDING DISCLOSURE OF
CONFIDENTIAL INFORMATION

A. John F. Doherty (hereinafter "signator") is a party to the above captioned Construction Permit proceeding.

B. Houston Lighting and Power Company (HL&P) has engaged General Electric Company (GE), a non-party in this proceeding, to supply the nuclear steam supply system for the Allens Creek Nuclear Generating Station.

C. Signator has requested that he be permitted to inspect the following GE information:

- a. The "list of 27 so-called safety-related items" from the Reed Report (provided for the sole purpose of determining that GE and HL&P have correctly decided which of the items are relevant to Mr. Doherty's admitted contentions);
- b. A current status report on each of the relevant items.

The information is claimed by GE to be confidential information and to be customarily held in confidence.

D. GE will make the information available to Signator to inspect and take notes, provided that the information in this document and notes (hereinafter "Information") will be used for the limited purposes and will be treated in a confidential manner as provided below.

E. In consideration of the disclosure of the Information by GE, the Signator agrees as follows:

- (1) Signator will inspect the document and take any notes in strict confidence and secrecy at GE's offices in Houston, Texas at a mutually convenient time.

(2) Signator will use the Information only for preparation of testimony in connection with his existing contentions in the above-captioned proceeding, in testimony as documentary evidence, in cross-examination, and for other legitimate evidentiary purposes in connection with his existing contentions. The Information, if used in whole or in part for any of the above purposes -- preparation of testimony, testimony, documentary evidence, cross-examination, and other legitimate evidentiary purposes -- shall be subject to paragraphs (3) and (4) below and shall be presented only during in camera hearing sessions that provide protection against non-disclosure equivalent to that provided under this Agreement.

(3) Signator will not photocopy, transcribe, reproduce, or disclose the Information to any other person or entity who has not executed this Agreement.

(4) Signator will safeguard and hold in strict confidence the Information, as well as all evaluations, data, or notes made in connection with the Information in accordance with paragraph (3) above.

(5) Restrictions on disclosure contained herein shall not apply to any information or material:

- a. which can be shown to have been known or used by Signator prior to the date of disclosure to Signator by GE, or
- b. which either before or after the date of disclosure to Signator by GE is lawfully disclosed to Signator by an independent third party without restriction on disclosure on behalf of GE, or
- c. which either before or after the date of disclosure to Signator by GE becomes available to the public through no fault of Signator.

Nothing in this Agreement shall be construed as permitting Signator to unfairly obtain the right to use Information that becomes publicly known through an improper act or omission on his part.

(6) GE retains all right, title, and interest in and to the Information.

(7) Signator may not assign this Agreement.

(8) Signator has not challenged the assertion that the Information is proprietary in nature and Signator will treat the Information on a confidential basis. In the event any NRC regulation, rule, or ASLB order, other administrative order, or judicial ruling requires the disclosure of the Information without providing the equivalent protection accorded under this Agreement, GE will have the right to immediately withdraw the Information from Signator upon request, and Signator will promptly abide by that request.

(9) Signator will return to GE all the Information at the conclusion of his use, but in no event later than the conclusion of the above-captioned Construction Permit proceeding, including appeals.

Date

Signator

CONSENT TO
GENERAL ELECTRIC COMPANY

By _____

Date