

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

RESPONSE OF HOUSTON LIGHTING &
POWER COMPANY TO JOINT MOTION
FOR CLARIFICATION AND ESTABLISHMENT OF A
SCHEDULE FOR PRODUCTION OF SETTLEMENT DOCUMENTS

The Department of Justice and the NRC Staff, in response to this Board's reconsideration of its March 7, 1980 ruling concerning settlement documents, have filed a joint motion in two parts. In the first part, characterized as a request for "clarification," they suggest that reconsideration is improper because Movants entered into settlement negotiations "without prejudice" to discovery (Jt. Motion at 2-3) and argue that if Board does reconsider its ruling it should provide a statement of the "reasons which have prompted the Licensing Board to reconsider its ruling" and give Movants the opportunity to respond. (Jt. Motion at 3). The second part of the motion moves the Board to "establish a schedule whereby the documents must be produced "forthwith." (Jt. Motion at 4).

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If the Board wishes to invite the parties into a renewed round of argument and briefing on this matter Houston has no objection, and we are willing to follow whatever procedures the Board deems appropriate in its reconsideration. However, Movants' demand that the documents be produced "forthwith" is frivolous and should be rejected.

In demanding the Board schedule production "forthwith," Movants would have the Board order the documents produced before it has reconsidered whether or not their production is called for. The Appeal Board hardly had this bizarre proposition in mind when it remanded for reconsideration. Whether or not the documents should be produced is the precise matter to be reconsidered.^{1/} According to Movants, both the Appeal Board and this Licensing Board forgot a technicality -- the stay of the prior ruling -- and therefore the documents must be produced "forthwith," despite the intention of both this Board and the Appeal Board to the contrary. This argument is silly: it asks the Board to rule that when the Appeal Board remanded for reconsideration it advertently pre-empted the matter to be reconsidered. The Board should reconsider the production issue as it and the

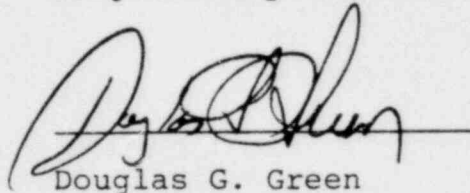
^{1/} Appeal Board Order of July 18, 1980, page 1.

Appeal Board contemplated.^{1/}

We additionally address two points in Movants' pleading raised in opposition to the Board's reconsideration. Movants' argue that the Board should disregard the supervening settlement discussions because Movants, before engaging in settlement negotiations, refused to waive their arguments vis-a-vis the documents in question. (Jt. Motion at 2). But it is a non sequitur to contend that because Movants' preserved their prior arguments the Board should ignore developments which alter those arguments' validity. As a second contention, Movants' speculate that the documents in question could be of importance if a full settlement is not reached, because they might have a bearing on issues that are unresolved. (Jt. Motion at 3). Movants' proffer not the slightest basis for such an assumption (never heretofore suggested), nor are we aware of any. Moreover, Movants ignore altogether the adverse policy implications that production, in the face of recent developments, would plainly raise.

^{1/} Not only is the result Movants' seek unsound, the technicality they seek to create is ill-conceived. Movants' overlook the fact that the Board's prior ruling implicitly has been withdrawn pending reconsideration, thus technically, there is no currently effective order to which a stay could or need apply.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Douglas G. Green', written over a horizontal line.

Douglas G. Green

Attorney for Houston Lighting &
Power Company

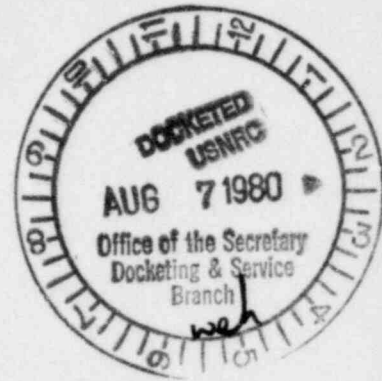
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DATED: August 1, 1980

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(South Texas Project, Units 1)	
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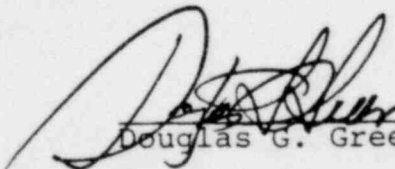
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing:

Response of Houston Lighting & Power Company To Joint Motion
For Clarification And Establishment Of A Schedule For Production
Of Settlement Documents;

Answer of Houston Lighting & Power Company To The Petition Of
The Texas Border Cooperatives For Leave To Intervene

were served upon the following persons, by hand *, or by
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