



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

OFFICE OF THE
GENERAL COUNSEL

December 19, 1994

Joseph R. Egan, Esq.
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2300 N. Street, N.W.
Washington, D.C. 20037

RE: City of Austin v. Houston Lighting and Power Co., No. 94-007964,
Harris Co. (Tx.); NRC File No. TR-94-28

Dear Mr. Egan:

I have reviewed your request, dated November 8, 1994, as supplemented on November 18, 1994, and December 8, 1994, for the depositions of eleven (11) current NRC senior officials and employees. This request has been designated "TR-94-28." These depositions are all related to events at the South Texas Project ("STP") and the official NRC reports issued in conjunction with NRC regulatory activities at that facility. For the reasons stated below, I am denying the request.

Initially, your request for the depositions of eleven NRC officials, including some of the most senior officials in the agency, is unreasonably burdensome. Granting the request would not only require these individuals to be absent from their important nuclear-safety duties for the actual depositions, but would also require an additional time away from their duties to review documents to prepare for the depositions. Taken as a whole, the loss of this time to the agency would constitute a significant drain on scarce agency resources.

Indeed, your request seeks the depositions of many high level agency officials who traditionally are made available for discovery in civil litigation only in extreme cases. These individuals constitute the entire top hierarchy of the agency. For example, your request seeks the deposition of (1) Commission Chairman Ivan Selin; (2) Mr. James Taylor, the Executive Director of Operations ("EDO") and head of the NRC Staff; (3) Mr. James Milhoan, who is currently one of the two Deputy EDO's; and (4) Mr. Joe Callan, who is currently the Regional Administrator for the NRC's Region IV Office. The functioning of these positions is crucial to the day-to-day operation of this agency and you have not submitted a strong reason justifying these individuals' absence from their duties. Thus, I find that their absence would be an unnecessary burden on the agency.

Finally, your request, by its own terms, seeks simply "to substantiate and better understand" NRC inspection reports and other NRC documents relating to the STP. But these documents are publicly available and presumably may be introduced into evidence for the truth of the matters asserted in them. Cf. Fed. R. Evid. 803 (8). The NRC's official documents speak for the agency in

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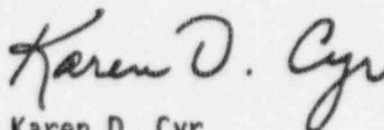
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this matter. Your request for depositions shows no special need that the documents themselves cannot satisfy.

I am not persuaded that there is good reason to permit depositions of either those employees who actually conducted the inspection effort or those high-level officials involved in the decision-making process. Individual employees' recollections or opinions may not accurately reflect the agency's views. Thus, I see no reason to provide testimony to supplement official documents or to explain agency officials' state of mind or state of knowledge. An agency official's involvement in an NRC inspection or in agency decision-making is not enough to warrant his or her deposition. If it were, NRC officials would face constant demands to testify in private lawsuits -- to the great detriment of the agency's everyday work.

In sum, granting your request for the depositions of these eleven (11) NRC officials and employees is not in the NRC's interest and, accordingly, is hereby denied. If you have any questions regarding this matter, please feel free to call Mr. Charles E. Mullins, Senior Attorney, at (301) 415-1606 or Mr. John F. Cordes, Jr., Solicitor, at (301) 415-1600. This letter completes NRC action on TR-94-28.

Sincerely,



Karen D. Cyr
General Counsel