

*Refer to  
Region IV*

C. Kingsbery Ottmers  
Public Counsel  
Office of Public Utility Counsel  
8140 N. Mojac  
Westpark III, Suite 120  
Austin, Texas 78759

Dear Ms. Ottmers:

This is in response to the enclosed correspondence from the Deputy Public Counsel, Barbara Day. In sum, Ms. Day appears to request reconsideration of my decision not to allow NRC an interview with South Texas Project (STP) Unit 2 resident inspector Mr. Garrison. She also asks that NRC follow a consistent policy in regard to such meetings.

Unfortunately, to grant her first request would be contradictory to her second. As we discussed by phone earlier, this policy has, to the best of my knowledge, been in place for some time and previously communicated to Ms. Day and your consultants during the River Bend prudency review. There are a number of reasons why we discourage such interviews. First, the results of any such interviews can be confused with official NRC positions, which they are not. Second, our inspector's time is of particular high value to the NRC mission of public health and safety, and therefore we attempt to exercise due care in its use. We attempt to minimize nonsafety-related demands on a resident inspector's time by our own agency as well as by others, and that is entirely consistent with proper execution of our safety responsibilities and our budgetary environment of limited resources.

As I offered to you by phone, I would be pleased to come to Austin or have you or your representative visit us in Arlington so that we may better familiarize you with the NRC process, the focus of our statutory responsibilities, and our policies and practices in support of the foregoing. Our policy for responding to informal information requests from parties to rate hearings is straightforward. Our records, including hundreds of inspection reports as well as periodic evaluations of the overall management of the project, have been and remain readily available. Should the OPUC or any other state agency wish to discuss with us in more detail the information that is already a matter of public record or our process for obtaining it, that too can be arranged. However, we think the choice of NRC personnel to accomplish this should be ours.

More formal requests, such as requests for NRC personnel to testify in proceedings before a Public Utility Commission or a similar body, are handled in a different manner, as I explained to you in our recent conversation. Requests of that type must, according to NRC's regulations, be submitted to the Office of the General Counsel. I am enclosing a copy of Title 10 of the Code of Federal Regulations, Part 9, Subpart D, in which this requirement is discussed.

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RIV:SLG  
GFSambor  
4/5/88

RC WBL  
MLBrown  
4/5/88

RA [Signature]  
RDMartin  
4/5/88

DRA [Signature]  
JPMontgomery  
4/5/88

AID: 88-093  
EDO CN#:003560

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There are a number of other points raised by Ms. Day which require response. While both you and she have said that your consultant's purpose was to better understand NRC's role in the South Texas Project, this is not what was communicated to Mr. Garrison. He was informed that NRC wished to discuss his views of Houston Lighting and Power's management. His initial reaction, which was the proper one, was that he should not be discussing that topic as an NRC spokesperson. At no time were NRC personnel made aware that Ms. Day or any other state employee was directly involved in the interview request. If they had been, we might have been able to reach a mutual understanding of what the NRC could and couldn't do for you in a more timely manner and with less frustration. The fact that NRC's request was relayed through the licensee, Houston Lighting and Power, added to the confusion and may have raised suspicion in our employees' minds as to whom NRC represented. We found it very unusual for another government agency to make such a request in this fashion.

Ms. Day's assertion that we are treating some other party to your prudency hearings differently remains a mystery to me. I have asked my personnel if they are aware of any such instances and they have not been able to provide any specific example. As you will recall, my request to you for a specific example met with negative results. In any event, your concerns have increased my sensitivity to this issue and as a result we have reminded Region IV personnel of our policy and the need to provide equitable treatment to all interests in these matters. Last, I must again emphasize that NRC has a relatively narrow, and in our view, extremely important, statutory responsibility for public health and safety. Our role in furtherance of the public interest follows accordingly. I understand that your role is quite different than ours and that our policy and actions may not always be in full accord with your interest. I would respectfully request that you attempt to recognize that the opposite is also true. I believe we have pursued mutually agreeable accommodations between the NRC and state ratemaking bodies nationally, including Texas, and we will continue to attempt to cooperate fully to the extent we can with you and others in all the states in Region IV.

I am enclosing a recently released NRC Systematic Assessment of Licensee Performance (SALP) report on STP because I think it is pertinent to our discussion.

Please give me a call at (817) 860-8226 if I can be of further assistance.

Sincerely,

Original signed by  
John M. Montgomery

John M. Montgomery  
Deputy Regional Administrator

Enclosures:  
As stated

(See next page for cc listing)

## PART 9 • PUBLIC RECORDS

(b) For purposes of this section, the term "employee of the NRC" includes all NRC personnel as that term is defined in § 9.101 of this part including NRC contractors.

(c) This subpart is intended to provide instructions regarding the internal operations of the NRC and is not intended, and does not, and may not, be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the NRC.

**§ 9.106 Production or disclosure prohibited unless approved by appropriate NRC official.**

No employee of the NRC shall, in response to a demand of a court or other judicial or quasi-judicial authority, produce any material contained in the files of the NRC or disclose, through testimony or other means, any information relating to material contained in the files of the NRC, or disclose any information or produce any material acquired as part of the performance of that employee's official duties or official status without prior approval of the General Council of NRC.

**§ 9.108 Procedure in the event of a demand for production or disclosure.**

(a) Prior to or simultaneous with a demand upon an employee of the NRC for the production of material or the disclosure of information described in § 9.106, the party seeking production or disclosure must serve the General Council of the NRC with an affidavit or statement as described in paragraphs (b) (1) and (2) of this section. Whenever a demand is made upon an employee of the NRC for the production of material or the disclosure of information described in § 9.106, that employee shall immediately notify the General Council. If the demand is made upon a regional NRC employee, that employee shall immediately notify the Regional Council who, in turn, shall immediately request instructions from the General Council.

(b)(1) If oral testimony is sought by the demand, a summary of the testimony desired must be furnished to the General Council by a detailed affidavit or, if that is not feasible, a detailed statement by the party seeking the testimony or the party's attorney. This requirement may be waived by the General Council in appropriate circumstances.

(2) The General Council may request a plan from the party seeking discovery of all demands then reasonably foreseeable, including but not limited to, names of all NRC personnel

from whom discovery is or will be sought, areas of inquiry, length of time away from duty involved, and identification of documents to be used in each deposition, where appropriate.

(c) The General Council will notify the employee and such other persons, as circumstances may warrant, of his or her decision on the matter.

**§ 9.109 Procedure where response to demand is required prior to receiving instructions.**

If a response to the demand is required before the instructions from the General Council are received, a U.S. attorney or NRC attorney designated for the purpose shall appear with the employee of the NRC upon whom the demand has been made, and shall furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate NRC official and shall respectfully request the court or authority to stay the demand pending receipt of the requested instructions. In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of a U.S. or NRC attorney on the employee's behalf, the employee shall respectfully request the demanding authority for sufficient time to obtain advice of counsel.

**§ 9.109 Procedure in the event of an adverse ruling.**

If the court or other judicial or quasi-judicial authority declines to stay the effect of the demand in response to a request made in accordance with § 9.109 pending receipt of instructions, or if the court or other authority rules that the demand must be complied with irrespective of instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand, citing these regulations and *United States ex rel. Touhy v. Ragen*, 340 U.S. 602 (1951).

Appendix A (removed); 56 FR 5028

**Subject B—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities**

**§ 9.100 Scope of subpart.**

(a) This subpart sets forth the procedures to be followed when a subpoena, order, or other demand (hereinafter referred to as a "demand") for the production of NRC records or disclosure of NRC information, including testimony regarding such records, is issued by a court or other judicial or quasi-judicial authority in a proceeding, including Federal grand jury proceedings, to which the NRC is not a party. Information and documents subject to this subpart include:

(1) Any material contained in the files of the NRC.

(2) Any information relating to material contained in the files of the NRC.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20545

**ACTION**

EDO PRINCIPAL CORRESPONDENCE CONTROL  
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FROM: BARBARA DAY  
OFFICE OF PUBLIC UTILITY COUNSEL

DUE: 03/25/88

EDO CONTROL: 003560  
DOC DT: 03/07/88  
FINAL REPLY:

TO: JOHN MONTGOMERY, RIV

FOR SIGNATURE OF:                      \*\* GREEN \*\*                      SECY NO:

DESC: CONCERNING ~~PHB~~ TECHNICAL ASSOCIATES ATTEMPT TO  
MEET WITH SOUTH TEXAS RESIDENT INSPECTOR

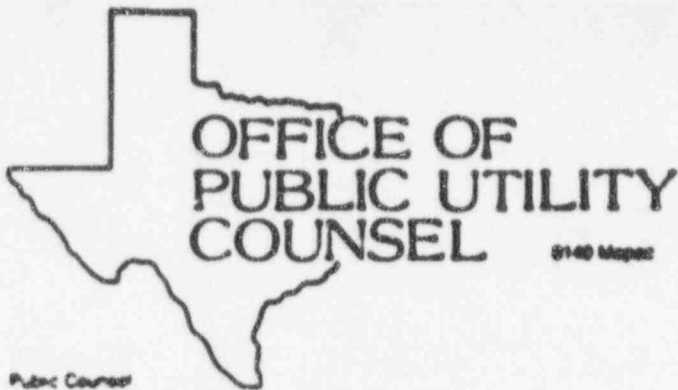
ROUTING:

DATE: 03/10/88  
ASSIGNED TO: RIV                      CONTACT: RMARTIN

STELLO  
TAYLOR  
REHM  
MURLEY  
MURRAY

SPECIAL INSTRUCTIONS OR REMARKS:





0140 Meplat Woodpark @ Suite 120 Austin Texas 78758 512 745 9900

Public Counsel

March 7, 1988

Mr. John Montgomery  
Region IV Assistant Administrator  
Nuclear Regulatory Commission, Region IV  
611 Ryan Plaza Drive, Suite 1000  
Arlington, Texas 70611

Dear Mr. Montgomery:

The Office of Public Utility Counsel (OPC) is a state agency created by the Texas legislature to represent the interests of residential and small commercial utility consumers in proceedings before the Texas Public Utility Commission, judicial proceedings, and all other proceedings where the Public Counsel deems such customers are in need of representation. We are parties in the proceeding pending before the Texas Public Utility Commission styled and numbered, Inquiry of the Public Utility Commission of Texas Into The Prudence and Efficiency of The Planning and Management of The Construction of The South Texas Nuclear Project, Docket No. 6668. Our office has retained consultants including HMB Technical Associates of San Jose, California to assist us in preparing positions and testimony on the issues in the case.

As you know, Mr. Richard Hubbard and Mr. Greg Minor of HMB Technical Associates and I visited the STP site February 25 and 26, 1988. As part of HMB's inspection of the site, they met with various technical personnel including the Project Manager. They requested to meet the NRC resident construction inspector and Mr. Jim Westemeier, HMB's Project Manager, attempted to arrange such a meeting. Instead of the construction site resident, Mr. Don Garrison, Mr. Westemeier informed us through Mr. Jon White that the NRC had decided to have HMB meet with Mr. Les Constable now of Region IV but formerly site resident inspector at STP. The meeting was scheduled for 9:00 a.m. February 26, 1988. At the scheduled time, however, HMB informed us that the NRC had decided to cancel the meeting. HMB was unable to tell us why you had changed your mind and arranged a telephone call for us to speak with you directly.

Mr. Minor attempted to speak with you by telephone at approximately 9:30 a.m. February 26, 1988 but was placed on hold for a considerable period. Mr. William Brown, Regional Counsel, finally spoke with Mr. Minor saying that you would not be available. In the conversation which ensued, Mr. Minor attempted to find out:

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Mr. John Montgomery  
March 7, 1968  
Page 2

1. if the NRC would speak with PNB Technical Associates consultants at another time;
2. whether the NRC's refusal to meet with PNB as representatives of the Office of Public Utility Counsel was consistent with the treatment accorded other parties in the Texas prudence docket.

As Mr. Minor explained to you, PNB's purpose was to discuss with the resident inspector informally how he performed his job at the STP site and how he satisfied himself that issues raised with site management were addressed. As you are aware, the discussion was to be informal, unrecorded or transcribed, not attended by attorneys and would have included an HL&P representative of the Company's choice. In sum, our technical consultants attempt to confirm and clarify their knowledge and impressions of the procedures and what they observe at the site. Mr. Minor was unable to get Mr. Brown to agree to permit such a meeting, but was dissatisfied that the treatment accorded us was the consistent treatment accorded other parties.

Since returning to Austin we have learned that, in fact, the NRC has fully cooperated with the Public Utility Commission staff including informal discussions similar to that requested by our office. Such unequal treatment accorded parties in the same docket by a public agency charged with the public's business is unacceptable. It is further objectionable to us since our office is also a public agency charged specifically with representing ratepayers.

We renew our request to meet with the resident site inspector, or for the NRC to follow a consistent practice with regard to such meetings. We are dissatisfied with your response to date. We request a reconsideration by you, or a policy statement of the NRC's consistent practice treating such requests similarly.

Yours very truly,

*Barbara Day*

Barbara Day  
Deputy Public Counsel

BD:vh

cc: Mr. Victor Stello  
Executive Director for Operations  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Honorable John Bryant  
U.S. House of Representatives  
House Energy and Commerce Committee  
Room 412, Cannon House Office Building  
Washington, D.C. 20515