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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before Administrative Judges:

Peter B. Bloch, Chairman
Herbert Grossman, Esq.
Dr. Walter H. Jordan

In the Matter of	Docket Nos. 50-445-OL2 50-446-OL2
TEXAS UTILITIES ELECTRIC COMPANY, et al.	ASLBP No. 79-430-06A OL
(Comanche Peak Steam Electric Station, Units 1 and 2)	November 16, 1984

MEMORANDUM
(Lipinsky Privileges)

I. Introduction

The "O. B. Cannon issue" arose in this case because of an internal O. B. Cannon memorandum (Lipinsky Memorandum) that mysteriously "leaked" and became public knowledge. That memorandum was prepared by Mr. Joseph J. Lipinsky, who was O. B. Cannon's quality assurance manager. The information contained in the memorandum was collected by Mr. Lipinsky in fulfillment of O. B. Cannon's contractual commitment to review Comanche Peak's painting program as a consultant to Applicants' management.

Among the more damaging conclusions stated in the Lipinsky Memorandum are:

> preliminary assessment that Comanche Peak has problems in the areas of material storage, workmanship (quality of work and painter qualification and indoctrination), not satisfying ANSI requirements and possibly coating integrity.

* * *

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> to some extent a parallel can be drawn with Comanche Peak and Zimmer. Comanche Peak is doing inspections to the degree that they . . . are comfortable or will tolerate.
>
> * * *
>
> often the writer felt that B&P wanted to buy the "right" answer. This is substantiated to some extent by the fact that they did not try to utilized the expertise and/or experience of the writer with regard to Quality Assurance/Quality Control, and the attitude of the B&R management (specially Quality Assurance).

Subsequent to this "leak," Mr. Lipinsky met with Applicants' personnel and lawyers. For a substantial portion of this time, Mr. Lipinsky appears to have continued to assert the validity of his conclusions. However, when he appeared for a sworn statement before an Nuclear Regulatory Commission (NRC) investigator, he was represented personally by a lawyer who also represents Applicants. In that interview and subsequently, Mr. Lipinsky testified that his preliminary conclusions were hastily drawn and do not raise serious problems.

The Board is concerned about whether Mr. Lipinsky's preliminary conclusions may be correct and about the process through which Mr. Lipinsky appears to have changed his mind.

Accordingly, on October 4, 1984 the Atomic Safety and Licensing Board in the harassment/intimidation portion of the operating license proceeding issued subpoenas duces tecum to O.B. Cannon executive personnel Robert B. Roth, John J. Norris, and Joseph J. Lipinsky. The Board's subpoenas requested the production of

> All records, including notes or recordings, in the possession or control of O. B. Cannon or its agents and relating directly or indirectly to: (1) work planned, discussed or conducted by O.B. Cannon for Texas Utilities

> Electric Company or its successors and their agents (Comanche Peak) during or after 1983, (2) the purpose or process of planning for the "Lipinsky Memo Meeting of November 10-11, 1983", and (3) the contractual or informal relationship between O.B. Cannon and Comanche Peak, including payments between them.

Attached to the subpoenas was a memorandum issued by the Board providing an explanation of the Board's request and defining the breath of documents the Board determined was encompassed by each subpoena.

> The schedule of documents attached to the subpoena to the witnesses should be broadly interpreted in light of the purposes for which we are seeking testimony. For example, records relating to meetings prior to November 11 in which the witnesses discussed the Lipinsky report or its basis should be included in (2) of the schedule. Notes or recordings made at such prior meetings or memoranda or letters discussing those meetings are relevant. Similarly, any records that shed light on the termination or suspension of work under Applicants' purchase order are clearly relevant. Nothing in this paragraph should be interpreted to limit the scope of the attached schedule.

Memorandum (Testimony of O.B. Cannon Witnesses) at 2, October 4, 1984.

Counsel for O.B. Cannon submitted several documents in response to the Board's request but withheld one memorandum and three days of calendar diary notes, all prepared by Mr. Lipinsky. (Brief in Support of Lipinsky Privilege, November 5, 1984). Applicants informed the Board that they reviewed the O.B. Cannon files and cited fifteen documents for which they asserted attorney-client privilege or work product privilege. (Letter, McNeil Watkins, II to Atomic Safety and Licensing Board (ASLB), October 18, 1984; Applicants Motion to Supplement Statement as to Privileged Trial Preparation Materials, October 19, 1984). Intervenor

CASE submitted a Brief in Opposition to Applicants' nondisclosure of the materials designated by the Applicants as privileged. CASE alleged that those documents not produced bear heavily on the question of whether Mr. Lipinsky was "pressured , coerced or influenced into recanting and changing the conclusions that he originally reached about coatings and related quality control at Comanche Peak." CASE Brief in Opposition to Applicants Request for Nondisclosure of Relevant Lipinsky Documents, October 26, 1984.

We accept CASE's above statement of the issue. We find a reasonable nexus between it and Applicants' management's character, an issue which has arisen in the course of litigation in this part of the case. See Houston Lighting and Power Co., et al (South Texas Project, Units 1 and 2), LBP-84-13, 19 NRC 659 (1984).

In ruling on the motion for production now before the Board, we must determine (1) whether the privileges asserted are properly claimed, and (2) if the material is privileged, whether there is an overriding necessity for production to overcome the traditional policy considerations in favor of withholding privileged documents.

II. Attorney Client Privilege

We begin with a discussion of the attorney-client privilege claimed by Mr. Lipinsky. The substance of Mr. Lipinsky's assertion is that attorneys with the firm actively representing Applicants (Texas Utilities Electric Company) in the licensing proceeding also represented Mr. Lipinsky in his capacity as a consultant to Applicants, and as his

personal counsel during a deposition conducted by the NRC on January 4, 1984.

Based on a letter dated November 14, 1984 from counsel for O. B. Cannon to CASE Attorney Anthony Roisman and on a confirming entry in his diary, Mr. Lipinsky allegedly formally requested the legal representation of Mr. Reynolds and his firm on November 29, 1983. From the facts presently before the Board we cannct determine whether Mr. Lipinsky was represented by Applicants' counsel as of November 29, 1983.

Before delving into the facts of whether and when an attorney-client relationship existed, the Board expresses serious concern over this matter because it appears that the Code of Ethics section on Conflict of Interest and Impermissible Representation may have been transgressed. Rule 1.7(b)(1) states:

> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> (1) the lawyer reasonably believes the representation will not be adversely affected;

We believe, given the content of the Lipinsky report (as discussed infra), that it would not be reasonable for attorneys for Applicants to believe they could properly represent Mr. Lipinsky. His interest as a non-party deponent (which he amply illustrated in his diary notes) was solely to prevent his being forced into making fraudulent statements (potentially actionable against him) favorable to Applicants' coatings program in order to protect his position with O.B. Cannon. This interest was not compatible with the primary interest of Applicants in having

Mr. Lipinsky assist Applicants in discounting the importance of the Lipinsky memorandum.

Prior to the time he allegedly engaged counsel, Mr. Lipinsky had argued that an audit would be required to settle his uncertainties. He had learned at a meeting with Applicants on November 10 and 11, 1983, that they did not share his view. This apparent divergence of opinion meant that Mr. Lipinsky required legal advice about whether to maintain his original views and risk possible business or legal consequences or whether to reconsider his position. This latter course also had its perils because Mr. Lipinsky needed to consider in detail whether he could legitimately testify under oath that information he had collected and conclusions he had drawn were not valid.

Although the letter from O. B. Cannon's counsel states Mr. Lipinsky was advised of the potential conflict of interest but that he voluntarily consented to the representation, we see representation by Applicants' attorneys as impermissible.

We are persuaded by two comments contained in the Model Rules of Professional Conduct, adopted by the American Bar Association on August 2, 1983. The comments are contained under Rule 1.7, the general rule pertaining to conflict of interest. These comments compel the conclusion that it was impermissible for Applicants' law firm to have agreed to accept Mr. Lipinsky as a client. The first statement references loyalty to a client:

> Loyalty to a client is impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibilities or interests.

> The conflict in effect forecloses alternatives that would otherwise be available to the client.

The test whether a conflict precludes representation involves a determination that:

> . . . it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

We are unconvinced that Mr. Nicholas S. Reynold's firm could represent Mr. Lipinsky adequately in light of the firm's relationship to Applicants. The firm could not fully pursue with him the option of continuing to support his story. This conclusion is buttressed by the other statement crucial to our view:

> An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question.

Applicants' counsel had a serious incentive not to defend the validity of the evaluations and conclusions contained in Mr. Lipinsky's memorandum. Had they taken Mr. Lipinsky's view as accurate or reasonable, the position in which Applicants would have been placed would be a difficult one to defend to the Board and Staff in the licensing proceeding.

Even if we concluded that there was no ethical barrier to representing Mr. Lipinsky, for the Board to accept the attorney-client privilege, it must be established initially that an attorney-client relationship existed during the period in which the documents in question were generated. To help it to make that determination, the Board

earlier inquired directly of Mr. Watkins and Mr. Norris as to the nature of the relationship between the Applicants' law firm and O.B. Cannon personnel. (See Tr. Oct. 1, 1984 at 18721-27.) Based on the testimony elicited, the Board finds that for the extended period of time as suggested in the briefs submitted by Applicants and O.B. Cannon, no attorney-client relationship existed between the law firm retained by Applicants and O.B. Cannon employees working as Applicants' consultants.

At the October 1, 1984 hearing, counsel for Applicants and the O.B. Cannon witness, Norris, were asked repeatedly about the existence of any attorney-client relationship between Applicants' counsel and O.B. Cannon personnel. They were questioned specifically about past or present relationships and any or all relationships between the law firm and the O.B. Cannon firm or its individual employees. Tr. 18,721, 18725-27, 18,734-37. Counsel and witness Norris were precise in their responses that the only attorney-client relationship between the law firm and the O.B. Cannon firm or personnel, other than a possible derivative one based on O.B. Cannon being a consultant for Applicants, was the representation by counsel Watkins of Mr. Lipinsky on only the date of January 4, 1984, at the deposition taken of Lipinsky by the NRC. Ibid. (Although the testimony of Mr. Norris is subject to a motion to strike, he has had the opportunity to contradict these statements and has not filed any testimony to that effect.)

During the course of the discussion on the transcript pages noted above (Tr. 18721-27, 18734-18737), counsel had ample time to provide the Board with a full and complete explanation of the relationship between

O.B. Cannon and Applicants' counsel if any existed in the past, or at the time of the hearing. Applicants' counsel would persuade the Board that there has been an ongoing attorney-client relationship based on O.B. Cannon's employment as a consultant to Applicants. The Board does not agree, and we conclude that O.B. Cannon, by virtue of its being a consultant to Applicants, does not thereby simply become a client of Applicants' counsel. Further, we find no evidence of any document establishing an attorney-client relationship between Applicants' law firm and O.B. Cannon. No contract or retainer agreement was mentioned by Mr. Watkins at the October 1984 hearing or by Mr. Lipinsky in his affidavit dated November, 1984. Although O.B. Cannon now appears to have paid for the legal expenses, there is no indication that the firm had retained counsel prior to January 4, 1984, that Mr. Lipinsky had any belief other than that Applicants were paying for "his" counsel, or that Mr. Lipinsky ever intended to pay for counsel. See letter from Joseph Gallo, counsel for O.B. Cannon, to Anthony Roisman, counsel for CASE, November 14, 1984 (Gallo Letter).

While we recognize that Applicants' counsel represented Mr. Lipinsky on January 4, 1984, we do not find credible other statements indicating an attorney-client relationship between Applicants' law firm and O. B. Cannon during the preceding several months. Our determination is supported by Mr. Norris's testimony concerning the meeting he and Mr. Lipinsky attended on November 22, 1983 at the Washington D.C. office of Applicants' counsel concerning so-called "Lipinsky memorandum." At the October hearing, Judge Bloch propounded several questions relating to

the interaction at that conference between Messers. Reynolds and Walker and Messrs. Norris and Lipinsky. Each of Mr. Norris's responses indicate the attorneys were acting solely on behalf of Applicants.

Q. Was he [Mr. Watkins] giving you legal advice?

A. Negative.

Q. What did he say?

A. Well, they were asking Joe the details about the memo, as I remember it. I was an observer there. It's Joe's memo; you know, it's Joe's to defend, if he has to defend it, and prove it if he has to prove it.

Q. Were they giving Joe legal advice?

A. No, not to my knowledge. I think Joe as I remember it, mentioned just in passing that he felt like he was going to retain his own attorney. And to the best of my knowledge, I never discussed it with Joe, I think he probably retained somebody locally to give him legal advice. (Emphasis added. Tr. 19882-83).

The Board notes that an understanding of legal advice given to a non-professional is not dispositive of whether legal advice was provided. However, the dialogue adds weight to the Board's determination by corroborating Mr. Watkins's statement that his firm's representation of Mr. Lipinsky took place solely on January 4, 1984. (See infra Tr. at 18725). Mr. Norris's perception that Mr. Lipinsky may have desired a personal attorney different from Applicants' counsel also

calls into some doubt Mr. Lipinsky's alleged sudden desire to retain Applicants' counsel just seven days later.

Finally, the Board finds significant the diary notation by Mr. Lipinsky prior to his attendance at the November 22 meeting between Applicants' counsel and other O.B. Cannon personnel. In two separate entries Mr. Lipinsky described Mr. Reynolds as the "Tugco attorney."

> Message from D.M. (In Houston--1205 Hrs
> E Street 11/21/83) JJN on way to airport to
> Washington, D.C. to Tugco Attorney"
>
> * * *
>
> Purpose of meeting with Tugco attorney--
> not sure.

We find it noteworthy that before Mr. Lipinsky allegedly engaged Mr. Reynolds as counsel, i.e. before November 29, 1983 (see Gallo letter), the contacts between Mr. Lipinsky and Applicants' firm were initiated at the attorneys' behest. Generally, the steps one takes to retain an attorney are initiated by the potential client, and not by an attorney. The conferences throughout November 1983 where the law firm representing Applicants met with Mr. Lipinsky were tense because they were an attempt to ascertain Mr. Lipinsky's position. These meetings could have set a tone that would have interfered with subsequent communications, which could not therefore be full and candid. Thus, it makes more questionable an open, unconstrained relationship between attorneys for Applicants and Mr. Lipinsky. Such freedom to discuss important matters is a crucial factor in the attorney-client relationship.

It is also clear to us that Mr. Lipinsky could not have fully discussed his concerns with Mr. Reynolds, who would have been

immediately obligated to relay the information to Applicants, Furthermore, it was Mr. Lipinsky's understanding that he would immediately lose the assistance of counsel were he to take a position adverse to Applicants. Gallo Letter at 2.

The assertion of privilege with respect to Mr. Lipinsky's diary notes from November 29 to January 3 is especially troubling. According to Lipinsky's notes of November 14, 1983, the diary was initiated at the suggestion of NRC investigators to enable Lipinsky to protect his employment rights in the event he were fired over the Comanche Peak incident. Whatever claims of attorney-client confidentiality may be asserted with regard to communications between Lipinsky and Applicants' attorneys cannot extend to these diary notes even if they were prepared solely for Mr. Lipinsky's private use. See for example Weinstein's Evidence ¶ 503(b)[03]. Here, where the documents were for potential public use, the claim for privilege is even weaker. We would not have expected Mr. Lipinsky to record truly confidential matters in this diary.

The significance of the diary notes kept by Mr. Lipinsky is that if counsel merely clarified his initial statements in the course of representation, those notes should support counsel's position. If, on the other hand, initial statements were modified to suit Applicants' needs, those notes would be expected to indicate the extent of Mr. Lipinsky's voluntary participation in that process. Hence, the notes are crucial to a full understanding of the truth.

We shall require the production of Mr. Lipinsky's diary notes for November 30, 1983, and for December 1 and 8, 1983. Mr. Lipinsky's January 9, 1984 memorandum, also sought to be withheld, clearly is not covered by attorney-client privilege. First, the relationship was asserted to exist only up to January 4. Second, we have found that the relationship never existed. This document also clearly is not covered as the work product of lawyers. It appears to be solely his product and there is no evidence that it contains lawyers opinions or was produced in anticipation of litigation.

III. Work Product Immunity

As mentioned earlier, the Board received two letters from Applicants' counsel dated October 18, 1984, identifying 15 documents for which work product immunity is claimed. Applicants contend that the items detailed are privileged, and thus not discoverable by Intervenor CASE because they "were prepared by Applicants' representatives in anticipation of litigation" or by Applicants' Counsel. (Watkins's letters to the Board, dated October 18, 1984).

Applicants argue that the documents for which the work product immunity is claimed are exempted under NRC regulation 10 CFR 2.740(b)(2). This regulation encompasses the attorney work product doctrine set out in Hickman v. Taylor in 1947, (329 US 495), 675 Ct 385, 91 LEd 451 (1947)) and more recently codified in Rule 26(b)(3)of the Federal Rules of Civil Procedure. 10 CFR 2.740(b((2) states:

> (2) Trial preparation materials. A party may obtain discovery of documents and tangible things otherwise discoverable under paragraph (b)(1) of this section and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of this case and he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the proceeding.

Attorney work product is ordinarily given substantial deference in shielding from discovery an attorney's inner thought processes to enable the attorney to best prepare a client's case. It provides a "zone of privacy" within which attorneys may weigh the merits of their case and determine a litigation plan from which to proceed. (Coastal States Gas Corp. v Department of Energy, 617 F2d 854, 864 (DC Cir. 1980). But the work product doctrine is not unlimited in scope. It provides immunity for material gathered or prepared by an attorney or other representative of a party only if the material is for the purpose of litigation, either presently on-going or reasonably anticipated at a future time. Hickman v Taylor, 329 US 495, 675 Ct. 385, 91 LEd 451 (1947). Osterneck v E. T. Barwick Indus., 82 F.R.D. 81, 87 (N. D. GA. 1979) 8 Wright & Miller, Federal Practice & Procedure, §2024 (1970).

The work product doctrine, while not easily overridden, is not intended to provide an absolute immunity from discovery. US v Lipshy, 492 F Supp. 35, 44-45 (1979). See also. Nixon v. Sirica 487 F2d 700, 714-717 (1973)(even the President's privilege is not absolute). It is a qualified immunity requiring a balancing of the substantial need shown

by the party seeking discovery for the materials sought and his inability to obtain the materials of their substantial equivalent by other means without undue hardship, with the policy considerations shielding an adverse party's counsel in the course of preparation of the case for litigation. Hickman, 329 US at 511-512, 675 Ct. at 393-394; Federal Rules of Civil Procedure, 26 (b)(3). If the documents sought are categorized by the Board as attorney work product, the Board must then proceed to determine "whether the party seeking discovery has demonstrated need and hardship as mandated by Hickman and the Federal Rules." US v Lipshy 492 F Supp. 35, 46 (1979).

Although the Board is aware of the distinction drawn by some courts between ordinary work product and opinion work product in applying the above two pronged test (see Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1) LBP-82-82, 16 NRC 1144, 1162 (1982)), the distinction is not mandated by either Federal rule 26(b)(3) or 10 CFR 2.740(b)(2). It is our view that such a distinction does not serve to further the analysis of the work product immunity as it applies to the discovery motion pending before us. Further, there is case law which supports the proposition that even opinion work product, while ordinarily afforded a high degree of immunity, is subject to discovery when the need for that information is at issue and compelling. Boring v Keller 97 FRD 404 (1983).

The party resisting disclosure must bear the burden of proving that the privilege is properly applied. The party seeking disclosure of documents claimed to be privileged as attorney work product has the

burden of establishing need and hardship. See 35 ALR 3d 412 526 (Supp.. 1979). As noted herein, the substantive issue over which this discovery dispute arose concerned whether a witness was coerced or pressured into changing his testimony by Applicants or their counsel. To understand the significance of this witness's testimony, the Board recounts the relevant facts as shown in the record since August 1983.

The witness whose testimony is now in question is Joseph J. Lipinsky. Mr. Lipinsky is a quality assurance expert for O.B. Cannon Inc., a paint coatings firm that was retained by Applicants in 1983 to provide an analysis and evaluation of the paint coating program at Comanche Peak. In the course of his work in evaluating the quality assurance aspects of the coatings program, Lipinsky produced a "trip report" containing essentially unfavorable evaluations and judgments about the coatings program. This trip report was not intended to be disseminated outside Mr. Lipinsky's organization (O. B. Cannon, Inc.). However, through a series of unexplained events, the trip report surfaced among Comanche Peak personnel and its contents became known to Applicants' management, causing them serious concern.

After the trip report (or "Lipinsky memorandum") was brought to Applicants' attention, a series of meetings took place between O. B. Cannon personnel including Messrs. Lipinsky and Norris, and Applicants and their counsel. One purpose of these meetings may have been to gain an understanding of the reasons for Mr. Lipinsky's negative appraisal of Applicants' paint coatings program. It also appears, however, that Applicants understood the potentially damaging

ramifications of the Lipinsky memorandum to its position in the NRC licensing proceeding and met with O. B. Cannon representatives to control the possible damage done by the report. The facts in this case are also unusual in that, when Mr. Lipinsky had written a report describing Comanche Peak as "worse than Zimmer" and appeared to be a potential adverse witness, the Applicants hired O. B. Cannon and Mr. Lipinsky to provide services to it.

We find these facts to be troublesome in light of the work product privilege now claimed for Mr. Lipinsky and other O. B. Cannon witnesses. It does not seem logical that Mr. Lipinsky would be hired as an expert retained for litigation purposes, when O. B. Cannon's original contract provided that their services would be as consultants for the sole purpose of evaluating the paint program. Once Mr. Lipinsky's memo became known to Applicants and Intervenor, Mr. Lipinsky's testimony and his relevant documents could not be shielded from discovery by modifying Lipinsky's employment for the purpose of engaging him as an agent or representative within the meaning of 10 CFR 2.740(b)(2) or 26(B)(3) of the Federal Rules of Civil Procedure.

At issue here is the modification of Mr. Lipinsky's views concerning the trip report. Intervenor claims there is no other way to determine whether Mr. Lipinsky was coerced or pressured into later claiming that the concerns he expressed were unfounded other than to see the documents leading to his denial of his own professional evaluation. (CASE Brief in Opposition to Applicant Request for Non-Disclosure of Relevant Lipinsky Documents. October 26, 1984.) That, Intervenor

asserts, is the showing of substantial need to obtain the documents Applicants designate as privileged. We regard the threshold requirement of a "substantial need" showing as one to be rigorously applied by the judicial body. Diamond v Stratton 95 FRD 503 (1982); In re Doe 662 F2d 1073. But even if the Board followed the extreme reasoning contained in the 1977 case In re Murphy, 560 F2d 326, 336 (1977), where the Court said "opinion work product enjoys a nearly absolute immunity and can be discovered only in very rare and extraordinary circumstances," we find the facts surrounding the Lipinsky memorandum to be extraordinary enough to meet the test Murphy sets out.

When substantial need for the contested documents is demonstrated, the immunity ordinarily accorded under the work product doctrine is overcome. Moreover, we see no other practical means to obtain the same facts about how Mr. Lipinsky's testimony evolved into his September 28, 1984 affidavit other than to view the documents related to the incident. It has always been stressed to the parties that it is the Board's strong preference to review documents as the best evidence of what occurred --documents are unmarred by risks inherent in live testimony such as lapses in memory or witness editorializing. Therefore, we do not feel that the same information or its substantial equivalent can be obtained by CASE by other means.

In balancing the relevant factors to determine whether the work product doctrine should shield the documents enumerated in Applicants' letters of October 18, we find that the weight of and unusual nature of the facts in this case tip the scale to the side of disclosure.

However, we have not decided to order wholesale disclosure where it would clearly be inappropriate to do so. We exempt documents numbered 12, 13, and 14 as legitimately privileged under the work product doctrine. These documents were generated by Mr. Watkins, an attorney for Applicants, apparently for use internally by the law firm. It does not appear that distribution outside the law firm was contemplated.

O R D E R

For all the foregoing reasons and based on consideration of the entire record in this matter, it is this 16th day of November 1984

ORDERED:

That documents 12, 13 and 14, listed in Texas Utility Electric Company's letter to the Board of October 18, 1984, are privileged and need not be disclosed. In all other respects, privilege asserted by O.B. Cannon and by Applicants with respect to any O.B. Cannon or Lipinsky documents, is denied. Those documents must delivered to the parties and the Board by 12 noon tomorrow, November 17, 1984, at the locations specified in the course of this morning's telephone conference.

FOR THE
ATOMIC SAFETY AND LICENSING BOARD

Peter B. Bloch, Chairman
ADMINISTRATIVE JUDGE

Bethesda, Maryland