

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION



In the Matter of)
)
HOUSTON LIGHTING &)
POWER COMPANY, et al.)
(South Texas Project, Units 1)
and 2))

AND)

TEN SUBPOENAS ISSUED BY THE)
DIRECTOR OF THE OFFICE OF)
INVESTIGATIONS)

Nos. 50-498-OL
50-499-OL

OI Case No. 4-92-003

MOTION TO MODIFY OR QUASH SUBPOENAS

Pursuant to 10 C.F.R. § 2.720(f) of the NRC's regulations, Houston Lighting & Power Company, et al. and the individuals named in ten subpoenas issued by the Director of the Office of Investigations (together, "Movants") 1/ hereby move the Commission to modify the subpoenas because the manner in which the OI seeks to enforce them is unreasonable and fails to protect the statutory rights of the subpoenaed individuals. 2/

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- 1/ The subpoenas issued by the Office of Investigations ("OI") on June 10, 1992 in Case No. 4-92-003 are appended hereto as Attachment 1.
 - 2/ Motions to quash or modify an OI subpoena are treated as motions under 10 C.F.R. § 2.720(f). See, e.g., Joseph J. Macktal, CLI-89-12, 30 NRC 19, 20 (1989).

(continued...)

Movants request that the Commission modify the subpoenas to provide that each individual receive a copy of any transcript of his interview that is prepared by OI within a reasonable specified time following the making of the transcript. As a precondition to receiving the transcripts, each of the individuals (and their counsel) will agree in writing to hold the transcripts in confidence and not reveal them to anyone other than counsel until OI's interviews are completed. Houston Lighting & Power Company ("HL&P") and the individuals are also willing to submit to interviews on a voluntary basis and without subpoenas as long as their rights are protected. Thus, the Movants request, in the alternative, that the Commission quash the subpoenas as unnecessary and direct OI to proceed with interviews on a voluntary basis under terms such as those described above.

FACTUAL BACKGROUND

In mid-April of 1992 the OI requested transcribed interviews with certain HL&P personnel (including senior management personnel) in connection with an investigation regarding the denial of access authorization to an individual at the South Texas Project Electric Generation Station. HL&P and

2/ (...continued)

Under 10 C.F.R. § 2.720(f), and as noted on the subpoenas, the Commission may:

- (1) Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or
- (2) condition denial of the motion on just and reasonable terms.

its management personnel agreed to proceed with these interviews voluntarily, and made no objection to the preparation of transcripts, provided that the individuals were supplied with copies of their respective transcripts within a reasonable specified time. These transcripts are needed because HL&P has been made a party to a Department of Labor ("DOL") proceeding concerning the very same facts underlying the OI investigation, and many of these witnesses either have been or may be required to testify in that case or possibly in related civil litigation. When informed that, due to this situation, the individuals desired copies of their transcripts, OI maintained that its investigatory policies precluded it from providing copies of transcripts to the individuals, based upon a generalized concern that transcripts might be shared with other interviewees.

In several telephone conversations and follow-up letters, counsel for Movants attempted to negotiate a fair and equitable arrangement for conducting the interviews on a voluntary basis in a manner that would protect both the interests of the Movants and the investigatory needs of OI. ^{2/} In order to remove any OI concerns about the potential that these transcripts might be shared, the individuals (and their counsel) have expressed their willingness to agree in writing that the

^{2/} See Letter from W. Baer to V. Van Cleave dated April 24, 1992 ("Attachment 2"); Letter from W. Baer to V. Van Cleave dated April 27, 1992 ("Attachment 3"); Letter from W. Baer to V. Van Cleave dated April 29, 1992 ("Attachment 4"), letter from W. Baer to D. Shapiro dated June 9, 1992 ("Attachment 5").

transcripts would be held in confidence and not be revealed to anyone other than counsel until the OI interviews are completed. Attachment 2 at 2-3; Attachment 5 at 2. The individuals have also been willing to agree that OI may withhold the transcripts for a specified time (up to 45 days after each respective interview) in order to allow the opportunity for interviews to be completed prior to releasing transcripts to anyone. Attachment 2 at 2-3; Attachment 5 at 2. These conditions assure that OI will be able to complete its interviews and have ample time for follow-up interviews without any possible risk that the transcripts would be shared or released in any way that might impair the integrity of the investigation, while at the same time preserving the rights of the individuals. 4/

Despite Movants' willingness to cooperate and participate openly and voluntarily in transcribed interviews, OI has refused to negotiate terms which address the very serious concerns of Movants in any meaningful way. Instead, OI has consistently maintained that it will not provide copies of the transcripts to interviewees within any reasonable, specified time.

4/ In the alternative, Movants proposed to tape-record the interviews. See Attachment 2. OI refused to allow tape-recording despite the general recommendation contained in the "Report of the Advisory Committee for Review of Investigation Policy on Rights of Licensee Employees Under Investigation," at 17 (Sept. 13, 1983), that such recording be permitted. None of Movants' proposals would impose any additional cost or burden on the NRC.

Movants believe that it is fundamentally unfair for one arm of the government to take depositions of these individuals, then to withhold their transcripts while they are forced to participate in a proceeding on the very same matter before another government agency. Accordingly, Movants have reluctantly declined to proceed with transcribed interviews on this basis.

In response, OI has issued subpoenas to compel the testimony of the ten named individuals, but continues to maintain that it has no obligation to, and will not, provide copies of transcripts to the individuals within a reasonable specified time following the interviews. Rather, OI asserts that it will withhold all transcripts until the end of its investigation, and that it cannot specify how long the investigation might take. ^{5/} This policy, particularly as applied in this case, is fundamentally unfair, discourages cooperation with OI investigations, and deprives individuals of statutory rights they may rightfully assert under the Administrative Procedure Act ("APA"). It is also unnecessary in the context of this investigation.

^{5/} An attorney in the NRC Office of the General Counsel has indicated that if copies of transcripts were requested by the individuals, he would advise OI to review at that time whether there is good cause for withholding the transcripts. However, OI itself has stated that it is OI's consistent policy to withhold transcripts until the end of its investigation. The OI investigator in charge of the investigation has specifically stated that OI would adhere to this policy and withhold transcripts of the interviews compelled under subpoena in this case.

ARGUMENT

I. THE OI POLICY IS IN CONFLICT WITH SECTION 555(c) OF THE ADMINISTRATIVE PROCEDURE ACT AND IS FUNDAMENTALLY UNFAIR

The OI has determined that it will not provide copies of transcripts on a timely basis to the individuals who testify pursuant to the subpoenas. Enforcement of the subpoenas under these terms is a clear violation of Section 555(c) of the APA, which provides:

A person compelled to submit data or evidence is entitled to retain or, on payment of lawfully prescribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony.

5 U.S.C. § 555(c). 6/

This provision establishes the statutory right of an individual to obtain a copy of a transcript of an interview such as those conducted by OI. It only permits the withholding of such a transcript upon a showing of "good cause." OI has not articulated any specific reason for withholding the transcripts in this case, but rather has asserted a blanket policy that transcripts will not be provided to interviewees, apparently based upon a speculative concern that interviewees might somehow

6/ Courts have reviewed NRC regulations concerning investigatory matters to assure that they afford individuals the minimum rights conferred by the APA, and presumably would review the OI's policy here under the same standards. See Professional Reactor Operator Society v. NRC, 939 F.2d 1047, 1051 (D.C. Cir. 1991).

use the transcripts to impede OI's investigation. 7/ Under this policy, OI essentially has established an un rebuttable presumption that a transcript should be withheld. This policy is in conflict with both the plain language of Section 555(c) and Congress' clear intent that transcripts be provided unless there is "good cause" shown for withholding them. 8/

In this case, OI has no reasonable basis for withholding copies of transcripts. Movants are willing to pledge not to share the transcripts, and also will agree to wait as long as 45 days after the interviews before receiving copies of the transcripts. Under these conditions there is no possibility that the transcripts could be used to impair OI's investigation in any way, and accordingly there can be no good cause for withholding them.

7/ Apparently, this was not always OI's view. For example, in the investigations conducted of alleged sleeping on the job of operators at the Peach Bottom plant -- where the need to protect the integrity of the investigation was no doubt at its zenith -- it is our understanding that certain individuals were provided with transcripts of their interviews with OI investigators. No specific reason why similar arrangements could not be made in this case is apparent.

8/ Clearly, "good cause" under § 555(c) must amount to something more than merely speculative concern that the transcripts could somehow be used to impede the investigation. Otherwise, a claim that such speculative "good cause" exists could be made in all cases, effectively nullifying the requirement that individuals are normally entitled to their transcripts. Accordingly, it is incumbent upon OI to show some specific, concrete evidence that the transcripts will be used to impede its investigation. Cf. Professional Reactor Operator Society, 939 F.2d at 1051 (concrete evidence required to justify exclusion of attorney from NRC investigatory interview.)

Additionally, in this instance, the individuals have an unqualified right to obtain transcripts because they will almost certainly involve information germane to an administrative proceeding currently being conducted by the Department of Labor. Both the House and Senate committee reports which explain how Section 555(c) is to be applied state that interviewees compelled to testify in a nonpublic investigatory proceeding "should . . . have such copies whenever needed in legal or administrative proceedings." 2/ HL&P is involved in precisely the type of administrative proceeding contemplated by Congress; it has been made a party to a DOL proceeding which involves the very same matters as to which OI seeks to interview these individuals. A number of the individuals subpoenaed by OI have been asked to testify in the initial phases of the DOL proceeding, and any or all of them may be asked to testify in formal hearings. These individuals therefore have a compelling need for copies of their on-the-record statements in preparing for this concurrent litigation, and accordingly are entitled to copies under the APA.

Furthermore, Section 555(c) and its legislative history are absolutely clear that, regardless of whether there is "good cause" for withholding copies of a transcript, the interviewee has the right to inspect it. Inspection is to be allowed to

2/ S. Rep. No. 752, 79th Cong., 1st Sess., (1945), reprinted in Administrative Procedure Act: Legislative History, 79th Congress, 1944-46, at 205-206 (1946); H.R. Rep. No. 1980, 79th Cong., 1st Sess. (1945), reprinted in Administrative Procedure Act: Legislative History, 79th Congress 1944-46, at 264-265 (1946). A copy of the relevant language from these reports is appended as Attachment 6.

individuals "in order to assure that their evidence is correctly set forth, to refresh their memories in the case of stale proceedings, and to enable them to be advised by counsel." ^{10/} If denied copies of their transcripts, the individuals involved in this case and the concurrent DOL proceeding will likely have need to repeatedly inspect their transcripts in connection with that proceeding. Because the individuals in any event have the right to inspect their transcripts whenever necessary, withholding the transcripts provides little meaningful extra protection to OI's investigation. As a practical matter, however, it would severely disrupt these individuals' efforts to prepare themselves for the concurrent proceeding, necessitating multiple repeated appointments for transcript inspection. A fairer and more straightforward procedure is simply to provide these individuals with copies of their transcripts, with suitable protections to ensure the integrity of OI's investigation.

It is a matter of fundamental fairness that a witness should have copies of prior sworn statements, depositions, or other relevant testimony given to the government before being asked by the government to testify on the same matters in a different forum. There is no legitimate reason to deprive a witness of the benefit of prior sworn statements, nor is there

^{10/} *Id.*

any reason to deprive counsel of the benefit of these transcripts during hearing preparation. 11/

This is of special concern because OI has refused in this case to guarantee that copies of transcripts would be provided even if the individuals themselves were to become the subject of a future enforcement action or order by the NRC. As a practical matter, this position forces such persons to decide whether to contest an order or enforcement action, and to participate in an enforcement conference, without the ability to carefully analyze the evidence upon which it may be based. This can be extremely prejudicial, because orders and enforcement actions growing out of OI investigations have led to the firing or demotion of affected individuals (as recently occurred at Sequoyah Fuels Corporation). 12/ Such a policy serves no legitimate purpose and unnecessarily impinges on the vital interests of affected individuals and licensees.

11/ It is our understanding that the DOL, which is usually relied upon to conduct the primary investigation of "whistleblower" claims such as that being investigated by OI in this instance, ordinarily provides a witness with a copy of any sworn statement made to the investigator, and apparently does not believe that withholding witness statements is necessary to assure the integrity of such investigations.

12/ See Order Modifying License (Effective Immediately) And Demand for Information, issued to Sequoyah Fuels Corporation on October 3, 1991, Docket No. 40-8027, EA 91-067. In that case, the Commission ordered a licensee to remove an individual from licensed activities based on alleged statements by the individual during voluntary interviews with OI. OI refused to allow the individual, or the company, to review the transcripts of those interviews prior to deciding whether to contest the order.

II. THE OI POLICY IS UNSOUND

The factual background underlying the issuance of the OI subpoenas in this case vividly illustrates that the OI policy is ill-advised. Here, the individuals have continuously been willing to appear voluntarily to be interviewed by OI. See, e.g., Attachments 3 & 4. They have been willing to participate either without transcripts, or with transcripts upon the simple assurance that any transcripts that are prepared would be provided to them within a reasonable time. See, e.g., Attachments 2, 4, & 5. Moreover, the individuals have been willing to agree in writing to hold the transcripts strictly confidential for the duration of the OI interviews, and have been willing to agree that OI could withhold the transcripts for a period of 45 days (six weeks) after each respective interview, a period more than sufficient to assure that other OI interviews can be conducted without concern for compromising of the investigatory process. Attachment 5 at 1-2. 13/

The failure of OI to agree to reasonable terms has resulted in repeated telephone conversations and correspondence involving counsel for the Movants and has led to inevitable delay

13/ By way of comparison, the law permits the Department of Labor only 30 days to complete its investigations of the very same matters. See 42 U.S.C. § 5851(b)(2)(A). In this case, OI has already conducted a number of interviews and reviewed documentary evidence, so the time it requires should be much less. Based on the schedule of interviews provided by its own subpoenas, OI expects to complete the interviews of the ten subpoenaed individuals in only three days, which also indicates that any reasonable follow-up could easily be accomplished in 45 days.

in the OI investigation. In a situation where these individuals were ready and willing to cooperate on a voluntary basis months ago, OI's policy has driven it to waste substantial NRC and licensee time and resources for no obvious benefit.

Finally, the OI policy at issue here has significant adverse implications for NRC practice. It is well-established that the statutory rights afforded by Section 555(c) extend "only to persons 'compelled' to testify or to submit data, and not to those who are merely requested to do so or who do so voluntarily." Attorney General's Manual on the Administrative Procedure Act, Implementation Memorandum, § 6(b), at 66 (1947). Thus, if the Commission will not by its own policy or by prior agreement (on a case-by-case basis) preserve these rights for individuals willing to act voluntarily, counsel will inevitably advise them to provide testimony to OI only if compelled to do so by subpoena. ^{14/} This will force OI to obtain subpoenas in many situations where they would not otherwise be necessary, resulting in a more cumbersome process with inherent delays. Moreover, this more adversarial and legalistic posture is likely to detrimentally affect the timely and open exchange between NRC investigators and the employees of licensees, thereby reducing

^{14/} In this case, the OI policy affects a number of senior management officials whose statements to OI might be construed as admissions by their employer and affect their company's legal positions in state and federal administrative or judicial proceedings relating to the same matter. OI's policy compels these individuals to choose between voluntary cooperation with OI and reasonable protection of their own and their company's legal interests.

the effectiveness of OI investigations -- even in cases like this one, where both the licensees and the individuals desire to fully cooperate with the investigation.

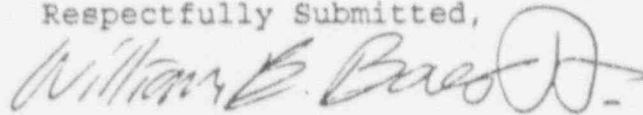
CONCLUSION

Despite a consistent willingness of Movants to voluntarily participate in transcribed interviews, OI has persisted with a policy that is fundamentally unfair and deprives individuals of their statutory rights. By doing so, OI has forced them to insist upon the more cumbersome and time-consuming subpoena process. Moreover, OI has indicated that it will withhold copies of transcripts prepared in conjunction with subpoenaed testimony without demonstrating any specific good cause for doing so. OI's blanket policy determination that copies of transcripts will never be provided to interviewees within a reasonable time violates Section 555(c) of the APA, and in this case injures Movants' legal interests for no clear investigatory benefit. When applied to persons who are fully willing to testify voluntarily, such a policy will also no doubt lead to more cumbersome and less effective investigations in the future.

Thus, Movants respectfully request that the Commission modify the ten subpoenas to provide that if transcripts of these interviews are prepared, copies of those transcripts be provided to each individual. If deemed necessary by the Commission, Movants would not object to waiting for a reasonable specified time certain before receiving copies of the transcripts (such as

up to 45 days after the interview is conducted), or to agreeing not to share copies of the transcripts with anyone as a condition of their receipt. In the alternative, since the individuals are willing to be interviewed voluntarily (and have transcripts made) without subpoenas, as long as their rights are protected, Movants request that the Commission quash the subpoenas as unnecessary and direct the OI to proceed without them.

Respectfully Submitted,



Jack R. Newman
William E. Baer, Jr.

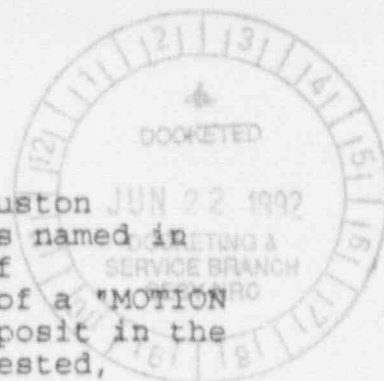
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Tenth Floor
Washington, DC 20036
(202) 955-6600

ATTORNEYS FOR LICENSEES AND THE
INDIVIDUALS NAMED IN TEN SUBPOENAS
ISSUED BY THE DIRECTOR OF THE
OFFICE OF INVESTIGATIONS */

*/ In conformity with 10 C.F.R. § 2.708(e), Movants hereby give notice that service upon them may be made to William E. Baer, Jr. at the address noted above.

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 1992, Houston Lighting & Power Company, et al., and the individuals named in ten subpoenas issued by the Director of the Office of Investigations (OI Case No. 4-92-003) served copies of a "MOTION TO MODIFY OR QUASH SUBPOENAS" on the following by deposit in the United States mail, certified, returned receipt requested, properly stamped and addressed.



Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Chief, Docketing and Service Section
(Original plus two copies)

Ivan Selin, Chairman
Kenneth C. Rogers, Commissioner
James R. Curtiss, Commissioner
Forrest J. Remick, Commissioner
E. Gail de Planque, Commissioner
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Ben B. Hayes, Director
Office of Investigations
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, TX 76011

Daryl M. Shapiro, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

June 18, 1992

A handwritten signature in cursive script, appearing to read "William E. Baer, Jr.".

William E. Baer, Jr.
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, DC 20036

United States of America

Attachment 1

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: Richard L. Balcom
Manager, Nuclear Security
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 30th day of June, 1992, at 1:00 p.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY  Hayes

DATE 6/10/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: Rick W. Cink
Speakout Investigator
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 29th day of June, 1992, at 3:30 p.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY *Robert Hayes*

DATE 6/19/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

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United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: D. P. Hall
Group Vice President, Nuclear
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 1st day of July, 1992, at 1:00 p.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY  Robert E. Hayes

DATE 6/10/92

Requested by:

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Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
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United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: J. Watt Hinson
Senior Investigator, Nuclear Security
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 1st day of July, 1992, at 3:00 p.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY 
Robert E. Hayes

DATE 6/10/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

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United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: Will J. Jump
Licensing Manager
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 30th day of June, 1992, at 8:00 a.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR
OFFICE OF INVESTIGATIONS

BY 
Dennis Hayes

DATE 6/19/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

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United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: W. H. Kinsey
Vice President, Nuclear Generation
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

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BY ORDER OF THE DIRECTOR
OFFICE OF INVESTIGATIONS

BY 
Robert S. Hayes

DATE 6/10/92

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Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
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Arlington, Texas 76011
TELEPHONE: 817-860-8286

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: John W. Odom
Manager, Human Resources
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 30th day of June, 1992, at 4:00 p.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY *[Signature]*
Special Agent in Charge

DATE 6/10/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. : 4-92-003

TO: R. J. Rehkugler
Director, Quality Assurance
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 29th day of June, 1992, at 12:00 p.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR
OFFICE OF INVESTIGATIONS

BY 
Ben H. Hayes

DATE 6/10/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO. : 4-92-003

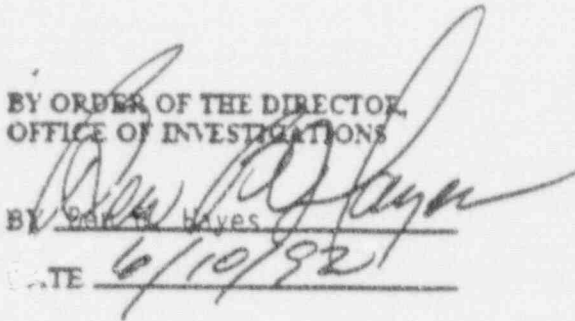
TO: Daniel P. Sanchez
Director, Maintenance Production
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 29th day of June, 1992, at 1:30 P.M. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY 
Paul H. Hayes

DATE 6/10/92

Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

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United States of America

NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF: NRC INVESTIGATION

CASE NO.: 4-92-003

TO: Mark R. Wisenburg
Plant Manager
Houston Lighting & Power Company
South Texas Project
P. O. Box 289
Wadsworth, Texas 77483

YOU ARE HEREBY COMMANDED, pursuant to Section 161 (c) of the Atomic Energy Act of 1954, as amended, to appear at the South Texas Project, Wadsworth, Texas

on the 1st day of July, 1992, at 10:00 a.m. to testify in the matter of the employment of Thomas J. Saporito at the South Texas Project, including any and all circumstances surrounding his hiring, work history, employment termination, the granting and revoking of his unescorted site access, and any and all discussions you participated in, were a witness to, or have knowledge of regarding this matter.

YOU ARE FURTHER COMMANDED to provide the NRC any and all files, records, correspondence, and personal notes in your custody, possession, or control pertaining to any employment related activity of or about Thomas J. Saporito.

BY ORDER OF THE DIRECTOR,
OFFICE OF INVESTIGATIONS

BY Herb E. Hayes

DATE 7/10/92

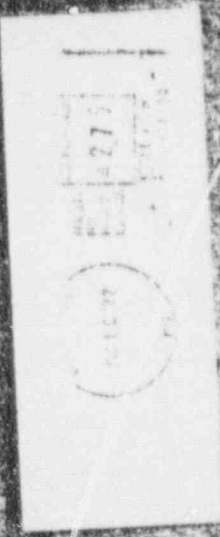
Requested by:

Virginia Van Cleave, Investigator
Office of Investigations, Region IV
U.S. Nuclear Regulatory Commission
611 Ryan Plaza Drive, Suite 400
Arlington, Texas 76011
TELEPHONE: 817-860-8286

On motion made promptly, and in any event at or before the time specified in the subpoena for compliance by the person to whom the subpoena is directed, and on notice to the party at whose instance the subpoena was issued, the Commission may (1) quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue, or (2) condition denial of the motion on just and reasonable terms. Such motion should be directed to the Secretary of the Commission, Washington, DC 20555. Failure to comply with the terms of this subpoena may result in the Commission's seeking judicial enforcement of the subpoena pursuant to Section 233 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2281.

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

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300



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

OFFICIAL BUSINESS

W. Baer, Esq.
Newman & Holtzinger
1615 L St., N.W.
Washington, DC 20036

925

MRC FORM 15A (11-84)



NEWMAN & HOLTZINGER, P.C.

1615 L STREET, N.W.
WASHINGTON, D.C. 20036-5680
202-955-6600

William E. Baer, Jr.
DIRECT DIAL NUMBER: (202) 955-6647

TELEFAX: (202) 872-0581

VIA TELECOPY

April 24, 1992

Ms. Virginia Van Cleave
Investigator, Office of Investigations
U.S. Nuclear Regulatory Commission
611 Ryan Plaza, Suite 400
Arlington, TX 76011

Dear Ms. Van Cleave:

The purpose of this letter is to summarize HL&P's position regarding the availability of transcripts of interviews of HL&P management personnel by the NRC Office of Investigations ("OI"), which we discussed by telephone on Wednesday, April 22, 1992.

The OI has requested interviews with certain Houston Lighting & Power ("HL&P") management personnel in connection with an investigation concerning denial of access authorization to an individual at the South Texas Project Electric Generation Station ("STPEGS"). HL&P and these individuals are agreeable to proceeding with these interviews voluntarily, and my understanding is that OI does not object to the representation of these management individuals by company counsel. In addition, OI wishes to transcribe these management interviews, but does not want to allow the individuals to have copies of their transcripts. Based on our conversations, my understanding is that this position is based on a concern that the interviewees could share transcripts with each other or with other potential interviewees.

Both HL&P and the individuals involved desire to cooperate fully with this investigation and are willing to proceed with the interviews on a voluntary basis under reasonable conditions. At the same time, however, HL&P has been made a party to a proceeding before the Department of Labor ("DOL") involving the very same facts as are under investigation by OI. There is also the possibility of a collateral state court action on this matter. Accordingly, both HL&P and the individual interviewees

Ms. Virginia Van Cleave
April 24, 1992
Page 2

(who are likely to be witnesses in the DOL proceeding) have an absolute need for complete and accurate records relative to what has been said to both DOL and the NRC. It is fundamentally unfair to require HL&P and the individual management personnel to participate in a government adjudicatory proceeding (the DOL proceeding) without providing them with copies of the statements they have voluntarily made to government investigators. This is especially true where, as here, the NRC and DOL have officially agreed to share information developed during investigations of such matters, and the interviewees' testimony could be used in the DOL proceeding. If these witnesses do not have copies of their testimony, their ability to adequately prepare themselves to participate in the DOL litigation or other related litigation is seriously prejudiced.

To accommodate these concerns while still meeting OI's investigatory needs and assuring the accuracy of the record of the interviews, we suggest the following alternatives, any of which would be acceptable:

1. OI could provide a court reporter to transcribe the interviews, and provide the interviewees with transcripts (at HL&P's expense) of their interviews as soon as the transcripts are prepared;
2. OI could provide a court reporter to transcribe the interviews and provide the interviewees with transcripts of their interviews within two weeks of each interview (HL&P would pay for these transcripts). This would permit OI to complete the interviews of others it has requested to speak with before the transcripts are released;
3. HL&P, at its own expense, could provide a court reporter mutually acceptable to HL&P and OI to transcribe the interviews and provide transcripts to OI at no expense to OI;
4. HL&P, at its own expense, could tape record the interviews and provide copies of these tapes to OI at no expense to OI; and

Ms. Virginia Van Cleave
April 24, 1992
Page 3

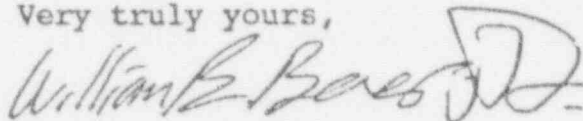
5. OI could provide a court reporter to transcribe the interviews, and allow an HL&P secretary to assist counsel for the individuals in taking notes to assure the accuracy of the transcript.

For each of these options, the interviewees would agree in writing to hold the transcripts or tapes confidential and not share them with other interviewees or anyone other than counsel until such time as OI's investigation is completed or OI otherwise releases copies of the transcripts. In addition, each individual would be promptly given the opportunity, with counsel, to review and note any inaccuracies in the tape or transcript retained by OI.

These options protect the interests of the HL&P personnel interviewed by OI, while also minimizing the impact on the OI investigation. I believe that these options are fully consistent with the recommendations of the Report of the Advisory Committee for Review of Investigation Policy on Rights of Licensee Employees, submitted to the NRC on September 13, 1983. It might also be possible to agree upon a compromise based on some combination of these options.

If none of these options is acceptable to OI, the individuals would nevertheless agree to be interviewed provided no recording or transcript is made. Also, if there are any other conditions that you can identify that may serve both HL&P's and OI's legitimate needs, I would be glad to discuss them.

Very truly yours,



William E. Baer, Jr.

WEB/pay

NEWMAN & HOLTZINGER, P.C.

1615 L STREET, N.W.

WASHINGTON, D.C. 20036-5660

202-955-6600

William E. Bear, Jr.
 DIRECT DIAL NUMBER: (202) 955-6647

TELECOPIER: (202) 872-0581

VIA TELECOPY

April 27, 1992

Ms. Virginia Van Cleave
 Investigator, Office of Investigations
 U.S. Nuclear Regulatory Commission
 611 Ryan Plaza, Suite 400
 Arlington, TX 76011

Dear Ms. Van Cleave:

This is to update you concerning the availability of individuals that the Office of Investigations ("OI") wishes to interview, as well as to advise you of our view of the right of Mr. R.W. Cink to counsel during an OI interview.

With respect to the availability of individuals that you informed me OI desires to interview, during the week of May 4, 1992, these individuals will be available as follows:

<u>Name</u>	<u>Availability</u>
R. Balcom	All week
R. Cink	All week
D. Hall	May 5 only
J.W. Hinson	All week
W. Jump	All week
W. Finsey	May 5 only
J. Odom	May 4-7 only
R. Rehkugler	All week
D. Sanchez	All week

As you can see, all of these witnesses will be available at some time during the next week. There may be particular times on particular days when certain individuals are not available; however, I think that any schedule difficulties can be resolved.

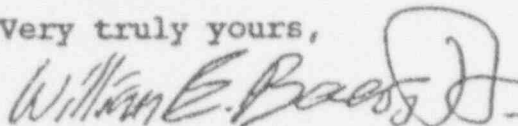
Ms. Virginia Van Cleave
April 27, 1992
Page 2

Of course, should you wish to transcribe any of these interviews, we would need to come to a mutually acceptable position on the availability of transcripts, as discussed in my letter dated April 24, 1992.

With respect to Mr. Cink's right to counsel, you have informed me that it is OI's policy to allow company counsel to represent only management personnel, and that, because you do not believe Mr. Cink to be in that category, you would object to the presence of company counsel during his interview.^{1/} I believe that based upon his position, the nature of his responsibilities, the level of discretion exercised by him in the conduct of his activities, and the fact that NRC and DOL typically hold companies accountable for reports and investigations of the type he prepares, Mr. Cink does qualify as a management individual. In any event, however, Mr. Cink has requested that I represent him (he made this request several weeks ago during your initial visit to the South Texas Project Electrical Generating Station ("STPEGS") to investigate this matter), and he has an absolute right to counsel of his choice. See Professional Reactor Operator's Society, et al. v. NRC, July 1991. In sum, Mr. Cink wishes to cooperate with OI and is willing to be interviewed, but not without the counsel of his choice.

Please let me know which individuals you would like to interview next week so that appropriate interview times and dates can be established. In addition, please do not hesitate to call if there are any other matters that we should discuss.

Very truly yours,



William P. Baer, Jr.

WEB/pay

^{1/} I understand that there have been numerous instances in which OI has allowed company counsel to represent non-management individuals, so I am not really sure that any firm policy exists.

NEWMAN & HOLTZINGER, P.C.

1615 L STREET, N.W.
WASHINGTON, D.C. 20036-5680
202-955-6600

William E. Baer, Jr.
DIRECT DIAL NUMBER: (202) 955-6647

TELECOPIER: (202) 872-0581

VIA TELECOPY

April 29, 1992

Ms. Virginia Van Cleave
Investigator, Office of Investigations
U.S. Nuclear Regulatory Commission
611 Ryan Plaza, Suite 400
Arlington, TX 76011

Dear Ms. Van Cleave:

This is to confirm our telephone conversations of April 28 and 29, 1992, regarding interviews by the Office of Investigations ("OI") of management individuals at the South Texas Project Electrical Generating Station ("STPEGS").

With respect to the availability for interview of Mr. Mark Wisenburg, he will be available during the week of May 4, 1992 on Thursday and Friday only (May 7 and 8, 1992).

With respect to individual interviewees' rights to review the copies of their transcripts, you have told me that the individuals would probably be allowed to inspect copies of their transcripts approximately 5 days after the completion of their interviews, provided that OI has completed its interviews on this matter at STPEGS. Counsel would be allowed to accompany the individuals during the review of their transcripts. However, you also noted that, should OI decide that further interviews at STPEGS are necessary, the review of the transcripts could be delayed.

In response to my letter dated April 24, 1992, OI has proposed that it would not share the transcripts of interviews of the management personnel with the Department of Labor ("DOL"), or, in the event that the transcripts were turned over to the DOL, they would also be made available to the individual interviewees at that time. OI would also provide the transcripts to the individuals at the completion of OI's investigation of this matter, though no time at which this will occur can now be specified. OI would not guarantee, however, that the individuals would get copies of their transcripts in the event that they were

Ms. Virginia Van Cleave
April 29, 1992
Page 2

turned over to other Federal agencies, such as the Department of Justice. Also, you did not believe OI could guarantee that the transcripts would be provided to the individuals at the time any NRC order or enforcement action involving the subject matter of the investigation were issued against HL&P or the individuals (you agreed to check on this).

This proposal has been carefully considered, and we have concluded that it does not adequately protect the interests of the individuals that OI desires to interview. First, as mentioned in my letter of April 24, 1992, it seems fundamentally unfair to deprive these individuals of transcripts of their statements, and the proposal does not address this problem.

Second, as also noted in my letter of April 24, Houston Lighting & Power Company (HL&P) is involved in litigation before the DOL concerning the very same matters as are under investigation by OI, and these individuals are likely to be witnesses in those proceedings. In addition, there is the possibility of collateral state court litigation on the same matter. Even if OI agrees to provide copies of the transcripts to individuals at the same time as they are released to the DOL or other parties, forcing these individuals to participate in that litigation without the benefit of their prior on-the-record statements severely prejudices their ability to prepare for the litigation and forces them to run the risk that the testimony they provide to OI might someday be used as a basis for challenging the results of the litigation or reopening the litigation. Also, with respect to the commitment not to share the transcripts with DOL, I am not sure that OI has the authority to make such a commitment in view of the NRC's official policy that the NRC and DOL "agree to share and promote access to all information [they obtain] concerning a particular allegation." See Memorandum of Understanding Between NRC and Department of Labor, Employee Protection, 47 Fed. Reg. 54585, December 3, 1982.

Third, OI apparently will not guarantee that individuals will be provided copies of their transcripts even if the NRC issues an order or takes other enforcement action on matters involved in this investigation. This would put both HL&P and its management individuals in the position of having to respond to an NRC order or enforcement action without being able to review the evidence on which it is based. Such a situation (which I understand has occurred in previous cases) is extremely unfair and presents an unacceptable risk.

Ms. Virginia Van Cleave
April 29, 1992
Page 3

Finally, under normal circumstances these individuals are entitled to copies of their transcripts under the applicable provision of the Administrative Procedure Act. See 5 U.S.C. § 555. I also understand that there have been a number of past cases in which OI has allowed individuals to have copies of transcripts of their interviews with OI investigators. The only basis OI has provided for not allowing the STPEGS individuals to have copies of their transcripts is a generalized investigatory policy based on a perceived concern that interviewees might share transcripts with other interviewees or prospective interviewees, thereby somehow potentially prejudicing OI's investigation. No specific facts or conditions involved in this investigation which substantiate this concern or otherwise demonstrate any strong need for withholding the transcripts from the individuals interviewed have been identified. In addition, as noted in my letter to you of April 24, 1992, each of the individuals involved is willing to agree in writing that he will not share copies of the transcript with anyone except counsel (counsel would also agree to be so bound). Such a procedure is a standard practice in various types of legal proceedings, and would protect the interests of both these individuals and OI. As noted in my letter dated April 24, 1992, the individuals would also be willing to wait two weeks before receiving transcripts (allowing interviews to be completed in the interim) if OI feels this would help secure the integrity of its investigation.

I want to reiterate that both HL&P and the individuals that OI desires to interview wish to cooperate with this investigation provided that their rights and legitimate interests are adequately protected. As noted in my letter dated April 24, 1992, these individuals are willing to voluntarily be interviewed either on the basis that they receive copies of their transcripts, or that no transcript of the interview is made, or under any of the other proposals set forth in that letter.

Please call me should you wish to discuss these matters further.

Very truly yours,



William E. Baer, Jr.

NEWMAN & HOLTZINGER, P.C.

1615 L STREET, N.W.

WASHINGTON, D.C. 20036-5680

202-955-6600

William E. Baer, Jr.
DIRECT DIAL NUMBER: (202) 955-6647

TELECOPIER: (202) 874-2581

BY TELECOPIER

June 9, 1992

Daryl M. Shapiro, Esq.
Office of the General Counsel
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

Re: Interviews of Houston Lighting & Power Company
Personnel by NRC Office of Investigations

Dear Mr. Shapiro:

This is to confirm our recent conversations concerning interviews of Houston Lighting & Power Company ("HL&P") personnel by the NRC Office of Investigations ("OI"). You have informed me that OI plans to issue subpoenas for a number of HL&P personnel. Based upon my conversations with Ms. Virginia Van Cleave of OI, my understanding is that these individuals include D. Hall, W. Kinsey, M. Wisenberg, W. Ju. p, D. Balcom, J. Odom, R. Rehkugler, W. Hinson, D. Sanchez and R. Cink. You also agreed to let me know which interviews OI plans to transcribe. In order to save time and effort by everyone concerned, these individuals have authorized me to accept service of the subpoenas on their behalf, and do not plan to contest service.

Because HL&P and the affected individuals desire to voluntarily cooperate with OI's investigation, I was disappointed that we were unable to reach an agreement which would assure the individuals to be interviewed that they would receive copies of their transcripts on a timely basis. As we discussed, these individuals are willing to be interviewed and do not object to the transcription of their interviews. However, because of the concurrent Department of Labor litigation on this matter and the possibility of later enforcement actions, they are unwilling to proceed with transcribed interviews without such assurance.

NEWMAN & HOLTZINGER, P.C.

Daryl M. Shapiro, Esq.
June 9, 1992
Page 2

With respect to OI's concern that release of the transcripts might somehow impair the integrity of the investigation, the individuals also are willing to agree in writing not to share their transcripts with anyone but counsel until OI completes its interviews, and are willing to wait for a reasonable specified time (such as up to 45 days after the interview) before having copies of the transcripts provided to them. Such an arrangement would preclude any possibility that the release of the transcripts could somehow impair the integrity of the investigation, and, given the actual nature and scope of this investigation, would provide ample time for any necessary review and follow-up interviews prior to the time the transcripts would be given to the individuals. Under these circumstances, it is not clear why the individuals' legitimate concerns cannot be accommodated, thereby avoiding the entire subpoena process.

Please let me know when you plan to serve subpoenas; we can then proceed to schedule any of the interviews that OI wishes to conduct without transcription while the issue of transcribed interviews is resolved. Also please do not hesitate to call me if there is anything that we might usefully discuss.

Very truly yours,

William E. Baer, Jr.

William E. Baer, Jr.

WEB/pay

cc: Ms. Virginia Van Cleave
NRC Office of Investigations

**LEGISLATIVE HISTORY OF SECTION 555(C)
OF THE ADMINISTRATIVE PROCEDURE ACT
(5 U.S.C. 555(C))^{*}**

(b) INVESTIGATIONS. - *Investigative process is not to be issued or enforced except as authorized by law. Persons compelled to submit data or evidence are entitled to retain or, on payment of costs, to procure copies except that in nonpublic proceedings a witness may for good cause be limited to inspection of the official transcript.*

This section is designed to preclude "fishing expeditions" and investigations beyond the jurisdiction or authority of an agency. It applied to any demand, whether or not a formal subpoena is actually issued. "Nonpublic investigatory proceeding" means those of the grand jury kind in which evidence is taken behind closed doors. The limitation, for good cause, to inspection of the official transcript is deemed necessary where evidence is taken in a case in which prosecutions may be brought later and it is obviously detrimental to the due execution of the laws to permit copies to be circulated. In those cases the witness or his counsel may be limited to inspection of the relevant portions of the transcript. Parties should in any case have copies or an opportunity for inspection in order to assure that their evidence is correctly set forth, to refresh their memories in the case of stale proceedings, and to enable them to be advised by counsel. They should also have such copies whenever needed in legal or administrative proceedings.^{**}

^{*} Section 555(c) was originally promulgated as Section 6(b) of the Administrative Procedure Act of 1945. It survives, as amended, in substantially the same form.

^{**} Reprinted from: S. Rep. No. 752, 79th Cong., 1st Sess., (1945), *reprinted in Administrative Procedure Act: Legislative History, 79th Congress, 1944-46, at 205-206 (1946)*; H.R. Rep. No. 1980, 79th Cong., 1st Sess., (1945), *reprinted in Administrative Procedure Act: Legislative History, 79th Congress 1944-46, at 264-265 (1946)*. The quoted text is identical in both the Senate and House reports.