



violations by STP. STP contends that Mr. Saporito's access was denied for having provided false information on his employment application.

As part of this investigation, the OI investigator assigned to the case determined that testimony from STP employees and management officials was required. The investigator attempted to conduct these interviews on a non-compelled basis, transcribing management interviews as is OI's regular practice. As communicated through counsel, these witnesses indicated that they would agree to non-compelled interviews only if OI would either guarantee that transcripts of these interviews be given to the witnesses no later than two weeks after the date of each interview or comply with one of several other alternatives outlined in counsel's April 24, 1992 letter to the OI investigator. (Attachment 2 to MOTION TO MODIFY OR QUASH SUBPOENAS). Each of these demands was rejected by OI as being contrary to its policy not to release voluntary interview transcripts until the end of the investigation.<sup>1</sup> This impasse necessitated the issuance of the OI subpoenas at issue in the present motion.

---

<sup>1</sup> This policy is consistent with the Administrative Procedure Act. Transcript rights granted under §555(c) of the Act do not extend to testimony voluntarily given. United States v. Murray, 297 F. 2d 812, 821 (2d Cir. 1962); Att'y General's Manual on the Administrative Procedure Act 67 (1947).

## II. The Motion to Modify or Quash

We note at the outset that this challenge is to compelled interviews and is therefore governed by the Administrative Procedure Act, 5 U.S.C. §551 et seq. ("APA"). Section 555(c) of the APA affords certain "procedural protections to a person subject to agency investigation . . . an assurance of lawfulness in the investigation, and the right to retain, procure, or at least inspect the data or evidence [the witness] has been compelled to submit." Guardian Fed. S. & L. v. FSLIC, 589 F.2d 658, 663 (D.C. Cir. 1978). Specifically, section 555(c) of the APA requires that when testimony is compelled from a party or a witness, that person is entitled, upon payment of costs, to obtain a copy of his transcribed testimony. This right, however, may be limited in non-public investigatory proceedings, upon a showing of "good cause," to inspection of the transcript. The invocation of the good cause exception contained in section 555(c) is within the agency's discretion and applies to situations where evidence is taken in a case in which prosecutions may be brought later and it would be detrimental to the due execution of the laws to permit copies of the transcript to be circulated. Commercial Capital Corp. v. SEC, 360 F.2d 856, 858 (7th Cir. 1966). Moreover, the agency is not required to make a good cause determination prior to receiving testimony from the witness. SEC v. Sprecher, 594 F.2d 317, 319 (2d Cir. 1979). To require otherwise would force OI to determine the impact on its investigations of releasing transcripts that do not yet

exist. The APA does not require such an impractical procedure.  
See id.

With this understanding of the APA, we find premature Petitioners' argument that OI has violated the APA by refusing to guarantee, as a precondition to compelled interviews, that the witnesses will receive a copy of their transcribed testimony. There can be no procedural violation of § 555(c) of the APA until OI conducts interviews, produces transcripts, and takes some action pertaining to the transcripts. At the appropriate time OI, of course, must allow the witnesses to obtain a copy of their interview transcripts unless, for good cause, the witnesses are limited to inspection of the transcripts.<sup>2</sup>

---

<sup>2</sup> Petitioners also argue that they "have an unqualified right to obtain interview transcripts because they will almost certainly involve information germane to an administrative proceeding currently being conducted by the Department of Labor." Petitioner's Motion at 8. Petitioners construe language taken from both the House and Senate committee reports on §555(c) stating that "[t]hey [witnesses] should also have such copies whenever needed in legal or administrative proceedings" as establishing this right. S. Rep. No. 752, 79th Cong., 1st Sess. 206 (1945); H. Rep. No. 1980, 79th Cong., 2d Sess. 265 (1946). We disagree. Even assuming Petitioners' interpretation of the legislative history to be correct, legislative history does not create substantive rights not contained in the statute itself. Sutherland on Statutory Construction 4th Ed. § 48.06 at 308. Section 555(c) does not provide that witnesses should have such copies whenever needed in legal or administrative proceedings. Rather, §555(c) explicitly provides that witnesses are entitled to obtain copies of their transcribed testimony except that, upon a showing of good cause by the agency, witnesses may be limited to inspection of the transcripts. We therefore decline to enlarge rights granted under the APA beyond what Congress enacted.

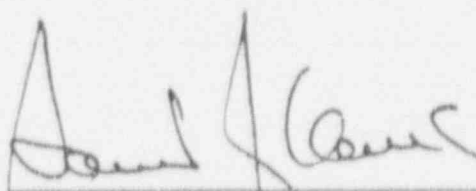
III. Conclusion

For the foregoing reasons, we deny the motion to modify or quash the subpoenas in this case.

It is so ORDERED.



For the Commission<sup>3</sup>

  
\_\_\_\_\_  
SAMUEL J. CHILK  
Secretary of the Commission

Dated at Rockville, Maryland,  
this 4<sup>th</sup> day of July 1992

---

<sup>3</sup> Chairman Selin was unavailable to participate in this matter.

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of

HOUSTON LIGHTING AND POWER COMPANY,  
ET AL.  
(South Texas Project, Units 1 and 2)

Docket No. (s) 50-498/499

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing CLI-92-10 DATED 7/2/92 have been served upon the following persons by U.S. mail, first class, except as otherwise noted and in accordance with the requirements of 10 CFR Sec. 2.712.

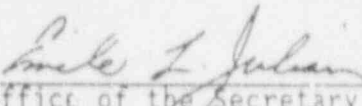
Ben B. Hayes, Director  
Office of Investigations  
U.S. Nuclear Regulatory Commission  
Washington, DC, 20555

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

William E. Baer, Jr., Esquire  
Newman & Holtzinger, P.C.  
1615 L Street, N.W., Tenth Floor  
Washington, DC 20036

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

Dated at Rockville, Md. this  
2 day of July 1992

  
Office of the Secretary of the Commission