

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



Before The Atomic Safety and Licensing Board

| | | |
|-------------------------------|---|---------------------|
| In the Matter of |) | |
| HOUSTON LIGHTING AND POWER |) | |
| COMPANY, et al. (South |) | Docket Nos. 50-498A |
| Texas Project, Units 1 and 2) |) | 50-499A |
| |) | |
| TEXAS UTILITIES GENERATING |) | |
| COMPANY (Comanche Peak |) | Docket Nos. 50-445A |
| Steam Electric Station, |) | 50-446A |
| Units 1 and 2) |) | |

MOTION OF THE DEPARTMENT OF JUSTICE FOR
MODIFICATION OF THE JULY 24, 1979 ORDER OF THE
ATOMIC SAFETY AND LICENSING BOARD AND
APPLICATION FOR ISSUANCE OF SUBPOENAS

Pursuant to the July 24, 1979, Order of the Atomic Safety and Licensing Board ("Board") the Department of Justice submits this Motion for Modification and Application for Issuance of Subpoenas.

I.
INTRODUCTION

On July 24, 1979, the Board issued an Order extending the discovery schedule in this matter to December 31, 1979. This Order reflected notices for depositions issued by the Department and Nuclear Regulatory Commission Staff ("NRC Staff"). 1/ During this period, the Department and the NRC Staff, as well as all of the other parties to this proceeding, have taken advantage of the additional time to pursue discovery. The extensive deposition discovery and document production

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1/ Joint Motion by the Department of Justice and the Nuclear Regulatory Commission Staff for Partial Reconsideration of the Board's Order of June 25, 1979 and the Application for Issuance of Subpoenas.

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accomplished since the Board's Order in July has been reflected in the Monthly Reports. Depositions have been conducted on almost every work day since July and in many instances, depositions were conducted simultaneously in more than one city. Despite the hard work and diligence of all parties to complete discovery by December 31, 1979, a limited amount of important work remains to be done. Thus the Department respectfully requests the Board modify the Order of July 24, 1979, by extending the cutoff for discovery to February 29, 1980, and that the Board issue the attached subpoenas itemized in Appendix B to this Motion.

II.
REASONS IN SUPPORT OF MODIFICATION OF
JULY 24, 1979 ORDER

A. Depositions Remain to be Completed

At least eight individuals, who were noticed for deposition prior to December, have not been deposed and must be fit into the existing schedule, 1/ which presently has only six open days. 2/ The following list shows the names and positions of the remaining potential witnesses, where the witness was to be deposed and the reason why the depositions were not completed when originally noticed.

1/ Attached hereto is Exhibit A representing the existing deposition commitments for the remaining month of December, without these eight reschedules.

2/ December 3, 7, 24, 26, 28, 31, 1979. These dates, however, are currently being used to try to reschedule or complete the witnesses listed on page 3 of this Motion.

| <u>NAME AND POSITION</u> | <u>PLACE TO BE DEPOSED</u> | <u>REASON WITNESS HAS NOT BEEN DEPOSED OR DEPOSITION NOT COMPLETED</u> |
|---|--|---|
| 1) T. Sweatman, Chief Engineer Texas Public Utilities Commission | Austin, Texas | Postponed from July 24, 1979, by agreement of counsel until other engineers' depositions were completed and documents examined. |
| 2) A. Gerber, Houston Light- ing & Power ("HL&P") Expert Economist. National Economic Research Associates | Washington, D.C. or Palm Beach, Fla. | All of Gerber's documents have not yet been provided to counsel. ^{1/} Counsel are currently negotiating this matter. Deposition may be rescheduled on December 18, 1979. |
| 3) J. M..Pennebaker, Manager, Market- ing & Customer Services of Texas Electric Service Company ("TESCO.") | Dallas, Texas | Postponed from November 15, 1979, by agreement of counsel. Department may not need to depose Pennebaker, pending information from Taylor's deposition. (<i>infra</i>) |
| 4) W. M. Taylor, Vice-President of TESCO Power- Engineering- Purchasing & Services | Dallas, Texas | Deposition not completed on November 16, 1979. Agreement of counsel to reschedule as soon as possible in December. |
| 5) E. D. Scarth, Vice-President, Operations of TESCO & Texas Utilities Generating Company's ("TUGCO") expert economic and engineering witness | Dallas, Texas | Postponed from August 29, 1979, by agreement of counsel pending completion of Scarth's examination at Securities & Exchange Commission Hearing and because of personal family illness. Scarth finished testifying at SEC on November 13. Counsel is seeking a date in December. |

^{1/} See Letter from Roy P. Lessy, Jr., Counsel for NRC Staff to J. A. Bouknight, Counsel for HL&P dated November 9, 1979.

| <u>NAME AND POSITION</u> | <u>PLACE TO BE DEPOSED</u> | <u>REASON WITNESS HAS NOT BEEN DEPOSED OR DEPOSITION NOT COMPLETED</u> |
|--|----------------------------|---|
| 6) J. F. Meyer, Supervising Engineer, HL&P | Houston, Texas | Continued from September 13, 1979, by agreement of counsel due to death in witness' immediate family. |
| 7) H. Woodson, HL&P expert witness | Austin, Texas | Woodson's documents were not made made available to Department for inspection in Austin, Texas until November 20, 1979. NRC staff has not yet reviewed these documents. NRC Staff has decided to postpone Woodson's deposition, scheduled for November 27, 1979, until NRC can review the documents. <u>1/</u> |
| 8) D. D. Jordan, President and CEO of HL&P | Houston, Texas | Not available on date no- ticed, December 27, 1979. Counsel are trying to reschedule. |

In addition to these pre-existing depositions, the Department has also recently agreed to join with Central and South West Corporation in noticing the depositions of four officers of Texas Utilities Company, (Messrs. Austin, Brittian, Hulsey and Spence) for the third week of December, if arrangements can be made. These deposition will probably take place in Dallas.

1/ See Letter from Michael B. Blume, Counsel for NRC Staff to J. Gregory Copeland, Counsel for HL&P, dated November 19, 1979.

B. New Potential Witnesses Have Been Revealed

Since the Board's Order, the Department has determined, through its investigation and discovery, the names of twenty-two additional individuals who may be called to testify in these proceedings. These names were recently provided to Applicants. 1/ Although some of these individuals have already been deposed by one or more of the parties, others have not yet been deposed. Applicants may wish to depose these remaining individuals before trial. Under the present schedule, additional depositions cannot be held prior to December 31, 1979.

C. A Limited Number of Potential Witnesses Remain to Be Noticed

Several officers and employees of Applicants, and other individuals also remain to be deposed. The depositions of these witnesses will relate to specific facts critical to these proceedings. The Department was unaware that these individuals had relevant information until the recent discovery phase was completed. The Department has set forth the names and positions of these additional deponents in Appendix B, attached herewith. The Department is filing herewith Applications to Notice these individuals for deposition testimony. 2/

1/ Third Supplemental Response of the Department of Justice to the Second Set of Interrogatories and Requests for Production of Documents from Houston Lighting & Power Company to Antitrust Division, U.S. Dept. of Justice, filed on November 27, 1979.

2/ The Department also anticipates applying for the production of documents from some of these witnesses. These subpoena duces tecum applications will be submitted to the Board after it has ruled on this Motion.

D. Discovery of Expert Witnesses Cannot Be Completed by December 31, 1979

Completion of the discovery of the expert witnesses cannot be accomplished by December 31, 1979. The Department's expert economist, Dr. Gordon Taylor, was deposed for two days on October 25-26, 1979, but Counsel for HL&P and TUGCO were unable to complete their line of questioning. Counsel for the Applicants have requested that Dr. Taylor's deposition be continued at some date after he has completed his analysis of the ongoing discovery. The Department does not object to continuing the deposition of Dr. Taylor for one day after the close of discovery so long as repetitive questions are not asked, the Department is allowed reciprocal discovery of HL&P and TUGCO's experts after the close of discovery,^{1/} and adequate time is permitted to include this information in the Department's trial brief.

E. Houston Lighting & Power Company's Appeal of Board's Order Regarding Collateral Estoppel

On November 9, 1979, HL&P petitioned the Atomic Safety and Licensing Appeal Board for Certification and Review of this Board's October 9, 1979 Order Denying Motions for Summary Decision based on the doctrine of collateral estoppel. On November 13, 1979, the Appeal Board ordered that responsive briefs on the issues of certification and the merits be filed by December 14, 1979. Obviously, this appeal will require counsel to devote their resources and time to a matter not

^{1/} HL&P's expert witnesses are Messrs. Simmons, Woodson and Gerber. TUGCO's expert witness is Mr. Scarth.

originally contemplated in the Board's Order. This problem is compounded because there is not a sufficient amount of time to complete discovery already committed under the present schedule.

III.
APPLICATION FOR ISSUANCE OF SUBPOENAS

In addition to, and in conjunction with, this requested modification of the Order of July 24, 1979, the Department respectfully requests, pursuant to C.F.R. § 2.720, that the Board issue the attached subpoenas itemized in Appendix B to this Motion. The subpoenas listed in Appendix B are for depositions that the Department proposes to take after December 31, 1979. The subpoenas call for the giving of testimony which is relevant to the issue of competition in the electric utility industry in and affecting the State of Texas, access to nuclear power plants, other sources of generation and/or transmission, and the issue of interstate/intrastate operation of electric utilities in the State of Texas and surrounding states.

IV.
CONCLUSION

The Department wishes to assure the Board that the Department's Motion for a modification of the Order of July 24, 1979, was filed only after the Department determined that the existing schedule could not reasonably accommodate the discovery needs of the parties to this proceeding. The additional discovery requested by the Department is reasonable and should assist the Board in narrowing the issues to be tried in this case.

For all of the foregoing reasons, the Department requests that the Board modify the Order of July 24, 1979, to reflect: (1) the outstanding discovery remaining to be completed; (2) the notification of the attached depositions; (3) the continuation of the deposition of all expert witnesses 30 days after the close of discovery; and (4) an expeditious and reasonable briefing schedule and trial date. Accordingly, the Department requests the Order of July 24, 1979, be modified as follows:

- | | |
|--------------------------|---|
| February 29, 1980 | - Completion of all discovery, except for 1 day continuation of each expert witness. |
| March 24 - April 4, 1980 | - Continuation of depositions of expert witnesses. |
| April 14, 1980 | - Final prehearing conference, pursuant to 10 C.F.R. §2.752, exchange of witness lists, short summaries of testimony and recommendations regarding consolidation, submission of trial briefs. |
| April 30, 1980 | - Evidentiary Hearing |

Respectfully submitted,

Susan B. Cyphert

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Washington, D. C.
November 29, 1979

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Received and entered to
201 by *[initials]* 79.

Heraldine Schlossberg

August 14, 1981.

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)

HOUSTON LIGHTING AND POWER)
CO., et al. (South Texas)
Project, Units 1 and 2))

Docket Nos. 50-498A
50-499A

TEXAS UTILITIES GENERATING)
COMPANY (Comanche Peak Steam)
Electric Station, Units 1)
and 2))

Docket Nos. 50-445A
50-446A

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing MOTION OF THE DEPARTMENT OF JUSTICE FOR MODIFICATION OF THE JULY 24, 1979 ORDER OF THE ATOMIC SAFETY AND LICENSING BOARD AND APPLICATION FOR ISSUANCE OF SUBPOENAS has been made on the following parties listed hereto this 30th day of November 1979, by depositing copies thereof in the United States mail, first class, postage prepaid.

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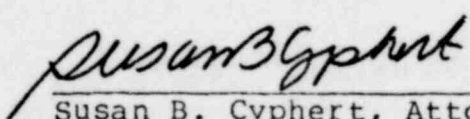
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EXHIBIT B

Department Applications to Notice Depositions

After December 31, 1979

| <u>Name of Deponent</u> | <u>Position</u> | <u>Place to be Deposed</u> |
|----------------------------------|--|--------------------------------|
| 1) James W. Atkins | Manager Gulf States Utilities ("Gulf States") | Beaumont, Texas |
| 2) E.B. Barnes | General Manager Texas Division Dow Chemical Co. | Houston, Texas |
| 3) R. Steve Beard | Superintendent of Power Texas Electric Service Co. ("TESCO") | Fort Worth, Texas |
| 4) Joseph E. Bondurant | Executive Vice President for Operations Gulf States | Beaumont, Texas |
| 5) Robert Corder | Director of Electric Department, City of Garland, Texas | Dallas, Texas |
| 6) Oscar Castillon de la Gaza | Manager of Area Development Houston Lighting & Power ("HL&P") | Fort Worth, Texas |
| 7) Robert J. Earhart | Former Engineer HL&P | Houston, Texas |
| 8) J.S. Farrington | President and CEO Dallas Power & Light Co. | Dallas, Texas |
| 9) Jack Greenwade | Cooperative Planning Administrator HL&P | Houston, Texas |

| <u>Name of Deponent</u> | <u>Position</u> | <u>Place to be Deposed</u> |
|--------------------------|--|--------------------------------|
| 10) George Knowles | Utility Director Diamond Shamrock Corporation | Houston, Texas |
| 11) Norman Lee | President Gulf States | Beaumont, Texas |
| 12) T.R. (Tom) Locke | Division Manager TESCO | Wichita Falls, Texas |
| 13) Henry L. Manning | Engineering Manager- Planning TESCO | Fort Worth, Texas |
| 14) Marty W. Milberg | Vice President Gulf Coast Area Diamond Shamrock Corporation | Houston, Texas |
| 15) James E. Monahan | Executive Vice President and General Manager City of Brazos | Waco, Texas |
| 16) Robert M. McCuistion | Vice President for Engineering HL&P | Houston, Texas |
| 17) George W. Oprea, Jr. | Executive Vice President HL&P | Houston, Texas |
| 18) A.M. Smith | Superintendent of Operations Gulf States | Beaumont, Texas |
| 19) Aubrey Sprawls | Vice President Consumer Services Gulf States | Beaumont, Texas |

| <u>Name of Deponent</u> | <u>Position</u> | <u>Place to be Deposed</u> |
|-------------------------|---|--------------------------------|
| 20) Thomas A. Standish | Senior Vice President HL&P | Houston, Texas |
| 21) Frank Taylor | Director of Purchases Dow Chemical Co. | Houston, Texas |
| 22) Edward A. Turner | Vice President Power Plant Construction HL&P | Houston, Texas |
| 23) Edward L. Watson | Vice President Rates & Regulatory Services TESCO | Fort Worth, Texas |

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ACTIVITY SCHEDULE

CP&L/DOJ Notice = Brownsville Notice =

DECEMBER 1979

| SUN. | MONDAY | TUESDAY | WEDNESDAY | THURSDAY | FRIDAY | SAT. |
|---|--|--|--|---|-----------------------------|------|
| NOTES: | | | | NOVEMBER | JANUARY 1980 | |
| | | | | SUN MON TUE WED THU FRI SAT | SUN MON TUE WED THU FRI SAT | |
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| | | | | 25 26 27 28 29 30 | 27 28 29 30 31 | 335 |
| 2 | 3 | 4 <u>Erwin</u> } Dallas <u>Stoddard</u> } | 5 <u>Wallak</u> } Dallas <u>Hughes</u> } | 6 <u>Weathersby</u> } Dallas <u>Newell</u> } <u>Gambrell</u> - Baton Rouge | 7 (Continued if Necessary) | 8 |
| 336 | 337 | 338 | 339 | 340 | 341 | 342 |
| 9 | 10 <u>Berman</u> - Dallas | 11 <u>Daniels</u> } Dallas <u>Heath</u> } <u>Autry</u> - Corpus Christi | 12 <u>Coffman</u> - Dallas | 13 <u>Howard</u> - Dallas <u>Wenders</u> - Chicago <u>Hardy</u> - Corpus Christi | 14 [Appeal Briefs] Due | 15 |
| 343 | 344 | 345 | 346 | 347 | 348 | 349 |
| 16 To be Scheduled this wk: <u>Austin</u> } Dallas <u>Brittian</u> } <u>Hulsey</u> } <u>Spense</u> } | 17 <u>Mabin</u> } D.C. <u>Wilson</u> } <u>Phillips</u> - Dallas | 18 <u>Loveless</u> - Dallas (Gerber - rescheduled possibly?) D.C. | 19 <u>Campbell</u> - Dallas | 20 <u>Skelton</u> - Dallas | 21 (Continued if Necessary) | 22 |
| 350 | 351 | 352 | 353 | 354 | 355 | 356 |
| 23 | 24 357 | 25 CHRISTMAS DAY HOLIDAY | 26 | 27 <u>Jordon</u> - Houston (To be Rescheduled) | 28 | 29 |
| 30 | 31 364 | 365 | 360 | 361 | 362 | 363 |