

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

NRC Docket Nos. 50-498A
50-499A

HOUSTON LIGHTING & POWER
COMPANY, PUBLIC SERVICE
BOARD OF SAN ANTONIO, CITY OF
AUSTIN, CENTRAL POWER AND
LIGHT COMPANY
(South Texas Project, Unit Nos.
1 and 2)

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

NRC Docket Nos. 50-445A
50-446A

MOTION FOR PROTECTIVE ORDERS

Texas Utilities Company ("TU"), pursuant to 10CFR, Sections 2.740(c), 2.790(b)(6), respectively moves the Board for the issuance of two separate Protective Orders (copies of which are attached hereto) preventing the public disclosure of certain documents and the information contained therein. With respect to the first Protective Order, TU has been requested by the City of Brownsville to provide to it certain fuel contracts and related documents which TU regards as confidential and proprietary in nature, the release and disclosure of which, to persons other than attorneys acting in this case, could seriously impair TU's relationship with its existing or potential fuel suppliers. The documents required to be produced in connection with the City of Brownsville's interrogatories have been made available to attorneys and paralegal personnel employed by attorneys for the City of Brownsville, but copies of those documents which the City of Brownsville has requested to be copied have not been delivered to counsel for Brownsville, pursuant to the agreement among counsel for the City of Brownsville and the TU Companies pending issuance by the Board of the attached Protective Order. Counsel for the City of Brownsville and for TU have agreed to the entry of the Protective Order referred to herein and counsel for TU have agreed to deliver copies of those documents requested by the City of Brownsville to be copied upon entry by the Board of the Protective Order.

The second Protective Order requested to be entered by this Motion relates to information requested to be produced or disclosed in connection with the oral depositions of Mr. Roy R. Parks, Mr. Ted R. Hatcher, Mr. Max Tanner or Mr. William Bradley or which are requested to be produced or disclosed in connection with the response to certain interrogatories propounded by Central Power & Light Company to the TU Companies.

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The TU Companies initially withheld the production of some of the documents requested by the subpoenas and the interrogatories because of the confidential and proprietary nature thereof and because a disclosure thereof could seriously impair ongoing negotiations between the TU Companies and other utilities concerning possible purchases of power. Many of the documents in question have been produced to counsel for the Nuclear Regulatory Commission's staff and Central and South West Corporation after such counsel agreed to respect the confidential nature of such documents, and upon the understanding of such counsel that the TU Companies would seek a Protective Order prohibiting the public disclosure thereof in accordance with the Protective Order set forth herein. Again, the public disclosure of the documents sought to be produced involve ongoing negotiations among the TU Companies and other utilities, the disclosure of which could seriously impair those negotiations and the relationship of the TU Companies with such utilities.

Representatives of the City of Brownsville have authorized Texas Utilities Company to represent to this Board that the City of Brownsville does not object to the entry of the Protective Order in the form of the Protective Order attached hereto and styled, "Texas Utilities Company Protective Order - Fuel Contracts and Related Documents".

Representatives of the Department of Justice, the Nuclear Regulatory Commission Staff, and Central and South West Corporation have authorized the TU Companies to represent to this Board that they do not object to the entry of the Protective Order in the form attached hereto and styled, "Texas Utilities Company Protective Order - Power Purchase and Capacity Negotiations".

Wherefore, Texas Utilities Company respectfully requests that this Board enter each of the Protective Orders attached hereto.

Respectfully submitted,

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By 

ATTORNEYS FOR TEXAS UTILITIES COMPANY,
TEXAS UTILITIES GENERATING COMPANY,
DALLAS POWER & LIGHT COMPANY,
TEXAS ELECTRIC SERVICE COMPANY AND
TEXAS POWER & LIGHT COMPANY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of:

Houston Lighting & Power Co.,
et al.
(South Texas Project, Unit
Nos. 1 & 2)

Docket Nos. 50-498A
and 50-499A

Texas Utilities Generating Co.,
et al.
(Comanche Peak Steam Electric
Station, Unit Nos. 1 & 2)

Docket Nos. 50-445A
and 50-446A

TEXAS UTILITIES COMPANY FUEL CONTRACTS
AND RELATED DOCUMENTS
PROTECTIVE ORDER

On January 31, 1979, the Public Utilities Board of the City of Brownsville, Texas ("PUB") filed its Initial Interrogatories to and First Request for Production of Documents by Texas Utilities Company and its Subsidiaries (hereinafter referred to collectively as "TU"). In response, Texas Utilities Company on behalf of itself and its subsidiaries filed Objections to and Motion for Protective Order alleging, inter alia, that the fuel contracts and related documents requested in certain of PUB's Interrogatories and Requests for documents relate to or contain information which is of a confidential or proprietary nature, the release or disclosure of which to third parties could impair TU's relationships with its existing or potential fuel suppliers and might otherwise jeopardize TU's competitive position.

TU has therefore requested this Board to issue a Protective Order concerning the public disclosure of such fuel contracts and related documents (or information obtained from such documents).

WHEREFORE, IT IS ORDERED that fuel contracts and related documents which would disclose the terms of the fuel contracts (or information obtained from such documents) requested by PUB in its Initial Interrogatories and Request for Production of Documents to TU, which have been designated by TU to be confidential or words to that effect (herein defined as Protected Information), shall be subject to the following restrictions:

1. Protected Information defined above shall not be disclosed to any person other than (a) counsel for PUB, including necessary paralegal, secretarial and clerical personnel assisting such counsel; (b) qualified attorneys for PUB taking testimony involving such documents or information and necessary stenographic and clerical personnel thereof; (c) identified independent consultants and technical experts and their respective technical and clerical staff who are engaged in or for this litigation on behalf of PUB; and (d) the Commission, the Board, the presiding officer, or Commission's staff.

2. Protected Information defined above shall not be made available to any person designated in paragraph 1(c) unless each such person shall have first read this order and shall have agreed, in writing (a) to be bound by the terms thereof; (b) not to reveal such protected information to anyone other than another person designated in paragraph 1 who shall also have read this order; and (c) to utilize such Protected Information solely for purposes of this proceeding.

3. If the Commission or the Board orders that access to or dissemination of Protected Information defined above shall be made to persons not included in paragraph 1 above, such matter shall only be accessible to, or disseminated to, such persons based upon the conditions set forth in that Order.

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4. All copies of documents provided to PUB and designated confidential by TU in accordance with the terms of this Order shall be marked by TU as follows: "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER OF THE NUCLEAR REGULATORY COMMISSION", or words to that effect. Copies of such documents and all notes and summaries therefrom made by counsel for PUB or any other persons designated in paragraph 1 shall be similarly marked. Any portion of a transcript or exhibits relating to this proceeding which contain any protected information defined above shall, on motion by TU, be bound separately and filed under seal, unless otherwise ordered.

5. If Protected Information is disclosed to any person other than in the manner authorized by this Order, the person responsible for the disclosure shall notify counsel for TU and the presiding officer of the NRC Licensing Board and make every effort to retrieve all such documents or information disclosed and to prevent further disclosure by it or by the person who was the recipient of such information.

In the event of an unauthorized disclosure of any protected documents or information, this Board shall ascertain the facts surrounding such disclosure and, if warranted, conduct a hearing to determine whether or not sanctions should be imposed against the person(s) responsible for the unauthorized disclosure.

6. Nothing in this Order shall affect the right of any party to seek any further judicial or administrative order concerning this matter, including the admissibility or denial of admissibility into evidence of protected documents or information defined above, nor shall it abridge the right of any person to seek judicial review or to pursue

other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, the Board or the presiding officer concerning the issue of the status of confidential business information.

In the event that counsel for any party to this proceeding intends to introduce into evidence any protected documents or information defined above, counsel seeking to introduce such protected documents or information shall notify in writing the party that produced the protected documents or information at least seven days prior to introduction of the protected documents or information so that the party who produced the protected documents or information may have an opportunity to seek in camera treatment of such protected documents or information.

7. Upon the conclusion of this proceeding, including any further proceedings on review of orders in those proceedings, all copies of protected documents furnished pursuant to this Order shall be returned to TU forthwith. Counsel for PUB and other persons designated in paragraph 1 shall at the conclusion of this and related proceedings as described above, destroy any notes, summaries or other such documents of a work product nature which contain protected information defined above.

A copy of this Order shall be served on all parties.

BY ORDER OF THE ATOMIC SAFETY
AND LICENSING BOARD

Dated December, 1979

Marshall E. Miller, Chairman

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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et al.
(South Texas Project, Unit
Nos. 1 & 2)

Docket Nos. 50-498A
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Texas Utilities Generating Co.,
et al.
(Comanche Peak Steam Electric
Station, Unit Nos. 1 & 2)

Docket Nos. 50-445A
and 50-446A

TEXAS UTILITIES COMPANY POWER PURCHASE
AND CAPACITY NEGOTIATIONS
PROTECTIVE ORDER

In connection with the depositions of Messrs. Roy R. Parks, Ted R. Hatcher, Max Tanner or B. G. Bradley, employees of Texas Utilities Company or one of its subsidiaries ("TU"), or in response to Central Power & Light Company's Second Set of Interrogatories to TU, by attorneys representing the Antitrust Division of the Department of Justice ("Department"), the Nuclear Regulatory Commission Staff ("NRC Staff"), TU produced certain documents called for under the terms of the subpoenas issued by the Atomic Safety and Licensing Board ("Board") to such persons and in response to such interrogatories, upon agreement among counsel that an appropriate protective order would be sought and entered. Other documents called for by that subpoena but relating to current power purchase and capacity negotiations between TU and other utilities were withheld pending the negotiation of a Protective Order. These documents produced and withheld from production contain information that is of a confidential or proprietary nature, the release or disclosure of which to persons other than counsel and their support personnel involved in

the proceeding named above could seriously impair such negotiations and TU's relationships with other utilities. TU has negotiated this Protective Order with attorneys for the Department, NRC Staff and CSW and those attorneys have agreed to the entry of this Order protecting the confidentiality of the information and documents designated by TU as "Confidential" or words to that effect, provided, however, that the Department, the NRC Staff or CSW may challenge the claimed confidentiality of any documents or information for which TU seeks such protection.

WHEREFORE, IT IS ORDERED that the documents produced and to be produced by TU to the Department, the NRC Staff and CSW for inspection and copying and designated "Confidential" or words to that effect, shall be subject to the following restrictions:

1. Confidential documents and information therein shall not be disclosed to any person other than (a) counsel for parties to this proceeding and those assisting counsel for such parties, including necessary secretarial, paralegal and clerical personnel; (b) independent consultants and technical experts and their staff who are assisting counsel in connection with this litigation; (c) qualified court reporters involved in reporting matters in this litigation; and (d) the Commission, the Board, the presiding officer or Commission's Staff.
2. Confidential documents and information contained therein shall not be made available to any person designated in paragraph 1(b) unless they shall have first read this Order and shall have agreed, in writing (a) to be bound by the terms thereof, (b) not to reveal such confidential document or information to anyone other

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than another person designated in paragraph 1, and (c) to utilize such confidential documents and information solely for the purpose of this proceeding; provided, however, that nothing in this Order shall prevent the Department of Justice from disclosing documents produced under the terms of this Order that indicate any violation of law or statute to the agency of the Federal Government authorized to prosecute such violation; but further provided, that TU be given ten (10) days written notice prior to the disclosure of such documents outside of the Antitrust Division of the Department of Justice or the Office of the Attorney General.

It is understood that before seeking judicial relief, the parties subject to this protective order will consult the Department in an effort to reach an agreement concerning the appropriate protection of such materials and information.

3. If the Commission or the Board orders that access to or dissemination of confidential documents and information contained therein as defined above shall be made to persons not included in paragraph 1 above, such matters shall be accessible to, or disseminated to, such persons based upon the conditions pertaining to, and the obligations arising from this Order, and such persons be considered subject to it.

4. Any portion of a transcript in connection with this proceeding containing any confidential documents or information contained therein shall be bound separately and filed under seal. When any confidential documents or information contained therein are included in an authorized transcript of a deposition or exhibits thereto, arrangements shall be made with the court reporter taking the

deposition to bind such confidential portions and separately label them "CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER OF THE NUCLEAR REGULATORY COMMISSION" or words to that effect. Before a court reporter receives any such document or information, he or she shall have agreed in writing to be bound by the terms thereof.

5. Any confidential document or information defined above is to be treated as such within the meaning of 5 U.S.C. §552(b)(4) and 18 U.S.C. §1905, subject to a final ruling, after notice, by the Commission, Board, the presiding officer, or the Commission's Freedom of Information Act Officer to the contrary, or by appeal of such a ruling, interlocutory or otherwise.

6. If confidential documents or information are disclosed to any person other than in the manner authorized by this Protective Order, the person responsible for the disclosure must immediately bring all pertinent facts relating to such disclosure to the attention of counsel for TU and the presiding officer of the NRC Licensing Board and, without prejudice to other rights and remedies of TU, make every effort to prevent further disclosure by counsel or by the person to whom the document or information was communicated. In the event of any unauthorized disclosure of any protected documents or information, this Board shall ascertain the facts surrounding such disclosure and, if warranted, conduct a hearing to determine whether or not sanctions should be imposed against the person(s) responsible for the unauthorized disclosure.

7. Nothing in this Order shall affect the admissibility into evidence of confidential documents or information defined above,

or abridge the right of any person to seek judicial review or to pursue other appropriate judicial action with respect to any ruling made by the Commission, its Freedom of Information Act Officer, the Board or the presiding officer concerning the issue of the status of confidential business information. In the event that counsel for any party to this proceeding intends to introduce into evidence any protected documents or information defined above, counsel seeking to introduce such protected documents or information shall notify in writing the party that produced the protected documents or information at least seven days prior to introduction of the protected documents or information so that the party who produced the protected documents or information may have an opportunity to seek in camera treatment of such protected documents or information.

8. Upon final termination of this proceeding, each person that is subject to this Order shall assemble and return to counsel for TU all confidential documents and information contained therein, including all copies of such matter which may have been made, but not including copies containing notes or other attorney's work-product that may have been placed thereon by counsel for the receiving party. This paragraph shall not apply to the Commission, the Board, the presiding officer or the Commission's Staff, which shall retain such material pursuant to statutory requirements and for other record keeping purposes, but may destroy those additional copies in its possession which it regards as surplusage.

A copy of this Order shall be served on all parties.

It is so ordered.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Marshall E. Miller, Chairman

Dated at Bethesda, Maryland

this _____ day of December, 1979.