

LPDR



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
50-446C

MOTION OF THE DEPARTMENT OF JUSTICE TO COMPEL PRODUCTION
BY HOUSTON LIGHTING & POWER COMPANY OF CERTAIN DOCUMENTS WHICH
IT CONTENDS ARE PRIVILEGED

I. INTRODUCTION

Pursuant to 10 C.F.R. § 2.740(f) of the NRC Rules, the Department of Justice ("Department") respectfully moves the Board for an Order compelling Houston Lighting & Power Company ("HLP") to produce certain documents being withheld under a claim of privilege.

II. BACKGROUND

On November 22, 1978, more than seven months ago, the Department served a first set of interrogatories and request for production of documents ("Interrogatories") on counsel for HLP. On January 11, 1979, HLP served its answers and

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objections. On January 15, 1979, HLP filed a motion for a protective order regarding certain of the Department's Interrogatories. On February 6, 1979, the Department filed an opposition to that motion and a response to HLP's objections. At the same time, the Department filed a motion to compel HLP to provide fuller responses.

On March 6, 1979, after a reply by HLP, this Board issued an Order denying HLP's motion for a protective order. On March 12, 1979, the Board issued a second Order which granted the Department's motion to compel in virtually every respect. The aforementioned Orders dealt, among other things, with the first instruction in the Department's Interrogatories 1/ and with the Department's request that all documents withheld because of a claim of privilege be listed together with a statement of the basis for the asserted privilege. (March 6, 1979 Order at 3).

Almost four months have passed since the issuance of those Orders. During that time, the Department has sought to avoid bringing these same matters back before the Board. Thus, following the Board's March 6 and March 12, 1979 Orders, during March 20, 1979 Prehearing Conference, and in several subsequent phone calls with HLP's attorneys,

1/ This instruction provided that if some of the requested documents had already been made available for the Department's inspection, they could be listed and described in lieu of being produced again, see March 6, 1979 Order at 1.

1979 Orders, during the March 20, 1979 Prehearing Conference, and in several subsequent phone calls with HLP's attorneys, the Department repeatedly offered to participate in a meeting of counsel in an attempt to narrow the scope of its Interrogatories. Counsel for HLP eventually agreed to attend such a meeting, which was held on April 18, 1979. It was the Department's understanding at the conclusion of that meeting that HLP 2/ would update certain interrogatory answers, provide a current list of purportedly privileged documents and produce an index of previously supplied documents categorized by interrogatory.

On May 31, 1979, approximately six weeks after the meeting of counsel and almost three months after the Board's Order denying HLP's motion for a protective order, HLP

2/ Attorneys for Texas Utilities Company were also present at that meeting and agreed to provide certain information. Their compliance is not at issue in this motion.

finally produced some supplementary interrogatory answers, an index 3/ and an updated privilege list.

The updated privilege list which HLP eventually produced see Exhibit A hereto, contains many documents which, on their face, do not appear to be sheltered from production either by prior Board Orders or by any established legal privilege. After carefully studying the list, the Department contacted one of HLP's attorneys and worked with him, by telephone, for several hours during the week of June 25 through 29, 1979.

3/ The so-called index contained nothing more than a meaningless list of eleven digit numbers which had apparently been assigned to documents during discovery in the civil case. Those numbers, although categorized by interrogatory, were totally unintelligible to the Department. The Department informed HLP's counsel in subsequent telephone conversations that such an index, without further identification of documents, was useless. Finally, in a phone conversation on or about June 6, 1979, counsel for HLP took the position that, rather than identify the documents, HLP would exercise the original option given to it of simply sending second copies of responsive documents already produced. See the first "General Instruction" contained in the Department's Interrogatories, Section E.1 at 7. This decision was made despite the preference for an index expressed by Chairman Miller at the March 20, 1979 Prehearing Conference (Tr. at 177).

In recent phone conversations with counsel for HLP (during the week of June 25-29), the Department has agreed to attempt to meet its needs with such a production on the condition that the copies be sent immediately and that each document be carefully categorized according to the interrogatory to which it relates. However, the Department feels that the Board should be aware that, despite HLP's protestations (see, e.g., March 20, 1979 Prehearing Conference, Tr. at 161 et seq.) to the effect that the Department was forcing HLP to index 100,000 documents, HLP has now chosen to exercise an option which HLP decided to forego seven months ago. In light of this history, the Department wishes to expressly reserve its right to resubmit this matter for the Board's consideration in the event that HLP's production is again inadequate.

On this occasion, the Department and HLP were able to narrow substantially the areas of dispute between them. 4/ However, despite the best efforts of counsel, several contested issues remain. It is these remaining issues which form the substance of this Motion.

III. ARGUMENT

A. Corporate Employees or Officers (Parties) Do Not Have the Same Work Product Privilege as Attorneys.

The first area of dispute between the Department and HLP concerns a category of documents written: (1) between or among HLP officers and employees and relating to an outside nontestifying consultant, or (2) from an outside nontestifying consultant to an officer or employee of HLP or vice versa. The contested documents falling within this category are listed in Appendix B hereto. 5/ HLP has justified its refusal to produce these

4/ As a result of these telephone conversations, HLP has agreed to produce immediately sixteen documents appearing on its privilege list, to wit documents numbered 202, 206, 210, 213, 220, 222, 224 (attachments), 225, 232, 246, 247, 248, 249, 263, 264, and 277.

5/ The Department has not included in its Appendix any documents which appear on their face to be procedural or administrative rather than substantive (e.g., status reports dealing with the progress that was being made on the Stagg study).

documents on a combination of the work product privilege and a privilege purportedly adhering to communications involving a non-testifying expert.

The immunity from discovery accorded to "work product" stems from Hickman v. Taylor, 329 U.S. 495 (1947) in which "written statements, private memoranda, and personal recollections" prepared by an adverse party's counsel in the course of his legal duties were held to be "outside the arena of discovery." Id. at 510. This limited "work product" exception to the broad scope of discovery has been codified in Rule 26(b)(3) of the Federal Rules of Civil Procedure and in 2.740(b)(2) of the NRC Rules. ^{6/} The NRC rule makes it clear that the privilege applies to material prepared "by or for [a] party's representative" (e.g., its attorney) but makes no mention of documents, memoranda, etc. written by (or for) a party itself.

^{6/} The NRC rule reads, in relevant part:

(2) Trial preparation materials. A party may obtain discovery of documents and tangible things otherwise discoverable under subparagraph (1) of this paragraph and prepared in anticipation of or for the hearing by or for another party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. (Emphasis added)

The cases demonstrate that "work product" focuses on material and information prepared by an attorney, or an agent of the attorney, under that attorney's direct and explicit supervision. In general, the doctrine is designed to protect "memoranda, recorded mental impressions, synopses of witness statements, drafts of documents" which are prepared by an attorney in anticipation of litigation. Hercules Corporation v. Exxon Corporation, 434 F. Supp. 136, 150 (D. Del. 1977). The privilege is afforded material which involves the application of the attorney's professional skill and experience. Philadelphia Housing Authority v. American Radiator & S. San Corp., 291 F. Supp. 247-50 (D. Pa. 1968). Moreover, many cases specifically distinguish an attorney's own work product (or the work product of his agents) from work done by agents or employees owing primary allegiance to employers other than the attorney. See, e.g., Virginia Electric & Power Co. v. Sun Shipbuilding and Dry Dock Co., 68 F.R.D. 397 (E.D. Va. 1975) and cases cited therein.

Nor is HLP's argument bolstered by the fact that the documents being withheld relate in some fashion to a non-testifying expert. The Board has in the past ruled that an attorney's communications with non-testifying experts are privileged from discovery by virtue of the work product doctrine (Prehearing Conference of March 20, 1979,

Tr. at 183-85). 7/ As Chairman Miller explained during the March 20, 1979 Prehearing Conference:

[W]e think that this question of experts you may have talked to that you don't intend to call, that to us seems to be within the purview of a lawyer's right to have his own thoughts and everything else. (Tr. 185, emphasis added).

Thus, the nontestifying expert exception which the Board has carved out is a subcategory of the work product privilege and, for all the reasons just discussed in connection with the work product doctrine, is not properly invoked in the circumstances here.

For all the foregoing reasons, documents #197, 211, 234, 240, 243, 258, 260, 265, 272, 273 and 278 (listed in Appendix B) should be produced forthwith.

7/ During the March 20, 1979 hearing, the Board held the NRC Staff's communications with non-testifying experts to be privileged from discovery. HLP later contended that certain of the Staff's requests to it were identical to the requests denied at the March 20, 1979 Prehearing Conference. See Houston Lighting & Power Company's Response to the NRC Staff's Response to Motion for Protective Order and Motion to Compel Further Answers to Staff's Interrogatories and Requests for Production of Documents, dated April 11, 1979, at 4. The Board sustained HLP's objection to responding to those requests. See April 16, 1979 Order at 1-2.

B. Documents Written To or From a Testifying Expert and Relevant to Matters About Which that Expert is Likely to Testify Should be Produced

The second area of dispute remaining between HLP and the Department relates to documents written either from or to a testifying expert. While the parties have informally resolved the issue as it pertains to many such documents, the question still remains open as to other documents falling in this category. Those documents are listed in Appendix C hereto.^{8/}

Much of the dispute regarding these documents revolves around the fact that the expert in question (Eugene Simmons) is both a named testifying expert and a corporate officer of HLP. ^{9/} To determine the validity of the privileges relied upon by HLP (attorney-client, work product/non-testifying

^{8/} Documents numbered 195, 198, 207, 208, 236, 238, 242, 243, 244, 260, 266, 268 and 275.

^{9/} It should be pointed out, however, that three of the documents appearing on Appendix C, documents numbered 238, 242 and 260, went to Abe Gerber, as well as to Eugene Simmons. Abe Gerber has been named as a testifying expert and is not an employee of HLP. At least insofar as the three documents given to Mr. Gerber are concerned, the Department sees no reason why those documents, each of which is relevant to these proceedings and undoubtedly to Mr. Gerber's testimony, should not be produced forthwith.

expert), it is necessary to ascertain in what capacity Mr. Simmons was acting when he wrote or received the documents in question.

This issue has arisen previously in connection with documents the Staff sought pursuant to its discovery request of HLP. The Board, in ruling on the Staff's motion for reconsideration of a Board Order denying access to certain HLP documents, stated:

The Board has ruled that the use by counsel of consultants not to be called as witnesses is protected as part of an attorney's trial preparation which is not subject to discovery. However, a different rule obtains as to the studies or analyses of others which a witness has used or will use in the preparation of his testimony or studied for cross-examination or other testimonial purposes. Such studies or documents should be produced, and HL&F has agreed to do so, subject to one exception. That exception relates to documents a corporate officer has reviewed in his capacity as an officer of a company involved in litigation, but which he does not intend to rely upon in his testimony. This exception is valid and will be sustained. (May 7, 1979 Order at 1-2, emphasis added, footnotes omitted).

Thus, the issues to be resolved are whether particular documents were written or reviewed by Mr. Simmons in his capacity as a corporate officer or in his capacity as a testifying expert and, if in his latter capacity, whether Mr. Simmons relied or intends to rely upon those documents in preparing his expert testimony. It is difficult to resolve these issues because a document first read or written by an individual in one capacity and for one purpose cannot totally be put out of that individual's mind when he or she subsequently acts in another capacity or for another purpose. Accordingly, the Department should not be prevented from discovering all the information relied upon by an opposing party's expert in preparation of his or her testimony or in anticipation of trial simply because that opposing party has chosen to name as its expert one of its officers or employees. Otherwise, counsel could designate all officers as "experts" in order to circumvent the discovery rules.

In the instant motion the Department is simply moving to compel the production of those documents which, based on their description (contained in the HLP Privilege List) appear directly relevant to the issues in these proceedings. For example, document #198, is described as a 4/15/77 Memorandum from Hunsicker (an attorney for HLP) to Copeland, Cowan, Thrash (all

attorneys for HLP) and Simmons (testifying expert), regarding Abe Braitman's (outside consultant) comments on the FPC Staff Report of ERCOT-SWPP Interconnection and Reliability Evaluation. 10/ In addition to the obvious relevance of the subject matter of this document, the cited report was prepared in large measure by William Scott, the individual whom the Department has named as its testifying expert in these proceedings. It is difficult to believe that Mr. Simmons will not rely upon or study (or has not relied upon or studied) Mr. Braitman's comments in connection with his testimony, preparation for cross-examination or the like. 11/

10/ The Board has already ruled that an attorney's communications with a testifying expert should generally be produced:

This is ordered because (a) if an attorney communicates with an expert, who is going to be an expert witness, such a communication could have a bearing on the witness's credibility... (June 25, 1979 Order, ¶ 3 at 3).

11/ The Department understands the difficulty involved in deciding whether a particular document was, or will be, "relied upon" by an expert in connection with his or her testimony. The Department believes it is highly unlikely that, in its May 7, 1979 Order, the Board intended that a testifying expert base his or her testimony directly on a particular document before that document be subject to discovery, but rather that it be one of the background sources which helped the expert formulate his or her opinions. If the Board feels that it cannot fairly rule (based on the sparse information provided in the privilege list) on whether the documents the Department is seeking are of a type likely to be (or to have been) relied on by Mr. Simmons in connection with his testimony, the Department respectfully suggests that the Board ask that the documents involving testifying experts be produced for in camera inspection, with a ruling on the Department's motion to follow.

For all the foregoing reasons, the Department respectfully requests that it be given copies of documents numbered 195, 198, 207, 208, 236, 238, 242, 243, 244, 260, 266, 268 and 275, all of which appear on HLP's Privilege List.

IV. CONCLUSION

For the reasons discussed in previous sections of this Motion, the Department respectfully requests that the Board compel HLP to produce, within one week of the date of entry of its Order, documents numbered 197, 211, 234, 240, 243, 258, 260, 265, 272, 273 and 278 (listed in Appendix B and involving communications between corporate officers or between a corporate officer and a nontestifying expert) and 195, 198, 207, 208, 236, 238, 242, 243, 244, 260, 266, 268 and 275 (listed in Appendix C and either to or from a testifying expert).

Respectfully submitted,

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July 11, 1979

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing MOTION OF THE DOJ TO COMPEL PRODUCTION BY HL&P OF CERTAIN DOCUMENTS WHICH IT CONTENDS ARE PRIVILEGED has been made on the following parties listed hereto this 11th day of July, 1979, by depositing copies thereof in the United States mail, first class, postage prepaid.

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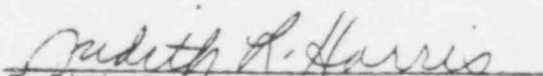
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APPENDIX A

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|--|--|-------------------------------------|
| 183 | 5/10/73 | Letter | Schwarz (B&B) to K.L. Williams (HL&P) | Redraft of STP Participation Agreement | Attorney-client |
| 184 | 1/21/76 | Memorandum | Thrash | CSW/FPC | Attorney-client |
| 185 | 2/24/76 | Memorandum | Thrash to Reese, Jordan Oprea, Dean, Standish, Simmons & Brown | Meeting of Simmons, Teague & Thrash with officers and representatives of Florida Power & Light Company | Attorney-client |
| 186 | Deleted | | | | |
| 187 | 9/27/76 | Letter | Braitman to Copeland | Draft affidavit and summary of professional experience | Work product; non-testifying expert |
| 188 | 1/31/77 | Memorandum | Copeland to Reese and Jordan | Current status of various CSW proceedings | Attorney-client |
| 189 | Deleted | | | | |
| 190 | Deleted | | | | |
| 191 | 2/14/77 | Letter | Stagg to McCuistion | Progress Report of study activities from Jan. 1, 1977 to Jan. 31, 1977 | Work product; non-testifying expert |

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|----------------------------|---|---|-------------------------------------|
| 192 | 2/14/77 | Letter (draft) | Thrash to Woolsey | Texas Public Utility Commission, Docket No. 14 | Attorney-client |
| 192-A | 2/14/77 | Same as Document No. 192 | | | |
| 193 | 2/25/77 | Memorandum | Thrash to Cowan | CSW (TPUC) "Hearing" of Feb. 23, 1977 | Work Product |
| 194 | Deleted | | | | |
| 195 | 3/21/77 | Memorandum | Copeland to Simmons | Committee on Power for the Southwest | Attorney-client |
| 196 | Deleted | | | | |
| 197 | 4/1/77 | Memorandum | Meyer to Kayser (HL&P) | Notes of Meetings with Glenn Stagg | Work product; non-testifying expert |
| 198 | 4/15/77 | Memorandum | Hunsicker to Copeland, Cowan and Thrash | Abe Braitman comments on FPC Staff report of ERCOT-SWPP connection and Reliability Evaluation | Work product; non-testifying expert |
| 199 | 4/18/77 | Memorandum (outline No. 1) | Thrash to Copeland | Testimony for PUC hearing of May 2, 1977 | Work product |

625020

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|----------------------------|---|--|------------------------------------|
| 200 | 4/18/77 | Memorandum (outline No. 2) | Thrash to Copeland | Testimony for PUC hearing of May 2, 1977 | Work product |
| 201 | 4/18/77 | Memorandum (outline No. 3) | Thrash to Copeland | Testimony for PUC hearing of May 2, 1977 | Work product |
| 202 | 4/18/77 | Memorandum (first draft) | Thrash to Simmons | Testimony for PUC hearing of May 2, 1977 | Attorney-client; Work product |
| 203 | 4/18/77 | Same as Document No. 202 | | | |
| 204 | 4/18/77 | Memorandum (outline No. 5) | Thrash to Simmons | Testimony for PUC hearing of May 2, 1977 | Attorney-client; Work product |
| 205 | 4/18/77 | Memorandum (outline No. 6) | Thrash to Simmons | PUC hearing of May 2, 1977 | Attorney-client; Work product |
| 206 | 4/18/77 | Memorandum | Thrash to Simmons and Copeland | Outlines of proposed testimony for PUC hearing | Attorney-client; Work product |
| 207 | 4/27/77 | Memorandum | Copeland to Thrash | Revision of PUC testimony Outline No. 4 | Work product |
| 208 | 4/27/77 | Memorandum | Copeland to Thrash | Revision of PUC testimony Outline No. 5 | Work product |
| 209 | Deleted | | | | |

623027

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|----------------------------|-------------|-------------------------------|---|--|---|
| 210 | 5/5/77 | Draft testimony | | Simmons PUC testimony | Work product |
| 211 | 6/1/77 | Notes | Meyer to Williams | HL&P input to Stagg studies | Work product; non- testifying expert |
| 212 | | Notes | Samples to Copeland | TU response to Stagg studies | Work product |
| 212-A | | Same as Docu- ment No. 212 | | | |
| 213 | 6/17/77 | Memorandum | Copeland to Jack Newton | Preparation of materials for Federal District Court trial | Attorney-client; Work product |
| 214 | 7/18/77 | Notes | | Listing of Stagg studies | Work product; non- testifying expert |
| 215 | Deleted | | | | |
| 216 | Deleted | | | | |
| 217 | Deleted | | | | |
| 218 | Deleted | | | | |
| 219 | Deleted | | | | |

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|--|--|-------------------------------------|
| 220 | 9/9/77 | Memorandum | McCuiston of Simmons | Engineering Department comments in preparation for SEC hearings | Work product |
| 221 | 9/12/77 | Letter | Stagg to McCuiston | Progress report of Stagg Study activities from Aug. 1, 1977 to Aug. 31, 1977 | Work product; non-testifying expert |
| 222 | 9/18/77 | Notes | Simmons | Settlement with CSW | Settlement discussion |
| 223 | 10/12/77 | Letter | Stagg to McCuiston | Progress report of study activities from Sept. 1, 1977 to Sept. 30, 1977 | Work product; non-testifying expert |
| 224 | 10/18/77 | Memorandum | Copeland to Barnett, Gooch, Hunsicker and Thrash | Response to inquiry from firm representing NERC 23/ | Work product |
| 225 | 10/19/77 | Memorandum | Simmons to Copeland | GSU letter to Texas PUC | Attorney-client |
| 226 | 10/21/77 | Memorandum | Copeland to Barnett, Gooch, Hunsicker and Thrash | Inquiries from firm representing NERC | Work product |
| 227 | 11/3/77 | Notes | FJM to Simmons | Status of Stagg final report | Work product; non-testifying expert |
| 228 | 11/09/77 | Letter | Hunsicker to Stagg | HL&P rebuttal Case at SEC | Work product; non-testifying expert |

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| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|--------------------------|--|---|-------------------------------------|
| 229 | 11/16/77 | Letter | Stagg to Simmons | Status of Stagg report | Work product; non-testifying expert |
| 230 | 11/17/77 | Draft | Motion | Before the Public Utility Commission of Texas re: Docket No. 14 | Work product |
| 230-A | 11/17/77 | Same as Document No. 230 | | | |
| 231 | | Report | Braitman | Analysis of CSW studies | Work product; non-testifying expert |
| 232 | | Notes | Simmons | Discussion with Attorneys re: NERC & FPC investigations | Attorney-client |
| 233 | Deleted | | | | |
| 234 | | Notes | Simmons | Review of draft Stagg study | Work product; non-testifying expert |
| 235 | 12/5/77 | Memorandum | Copeland to Gooch | Distribution list for Stagg Report | Work product |
| 236 | 12/5/77 | Memorandum | Thrash to Reese, Jordan, Oprea, Dean & Simmons | CSW-General | Attorney-client |

623030

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|--------------------------|---|---|-------------------------------------|
| 236-A | 12/5/77 | Same as Document No. 236 | | | |
| 236-B | 12/5/77 | Same as Document No. 236 | | | |
| 237 | Deleted | | | | |
| 238 | 12/13/77 | Draft | Stagg | Stagg study | Work product; non-testifying expert |
| 239 | 12/15/77 | Memorandum | Copeland to Simmons | Mailing list for Stagg study | Attorney-client |
| 240 | 12/23/77 | Draft Letter | Braitman to Simmons | Distribution of Stagg study | Work product; non-testifying expert |
| 241 | 1/09/78 | Letter | Glenn Stagg of Stagg Systems to McCuistion (HL&P) | Progress report 12/1/77-12/31/77 | Work product; non-testifying expert |
| 242 | 1/19/78 | Draft | Stagg to Oprea, Simmons, McCuistion, Williams (HL&P), Thrash, Copeland, Barnett, Gooch (B&B), Braitman & Gerber | Draft of Stagg study | Work product; non-testifying expert |
| 243 | 1/20/78 | Letter | Braitman to Simmons (HL&P) | Involvement of SWPP & NERC in CSW-ERCOT controversy | Work product; non-testifying expert |

623031

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|---|--|-------------------------------------|
| 243-A | 1/20/78 | Same as 243 | | | |
| 244 | 1/24/78 | Letter | Copeland to Simmons | Draft of letter concerning NERC-TAC review of ERCOT/SWPP interconnection | Attorney-client |
| 245 | 3/15/78 | Letter | Stagg to McCuistion | Progress Report 1/1/78-2/28/78 of Staff Study | Work product; non-testifying expert |
| 246 | 3/23/78 | Memorandum | Meyer (HL&P) to File | Review of CSW Studies in preparation for SEC case. | Work product |
| 247 | 4/7/78 | Memorandum | Doan (HL&P) to Simmons | Answers to CSW Interrogatories | Work product |
| 248 | 4/17/78 | Memorandum | Simmons to Copeland | Answers to CSW Interrogatories | Attorney-client; Work product |
| 249 | 4/18/78 | Memorandum | Meyer to Simmons | Answers to CSW Interrogatories | Work product |
| 250 | 4/26/78 | Letter | Simmons to Stagg | Status of Stagg studies | Work product; non-testifying expert |
| 251 | 4/26/78 | Letter | Stagg to Simmons | Status of studies related to CSW | Work product; non-testifying expert |

023032

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|----------------------------|-------------|-----------------------------|---|--|---|
| 252 | 5/01/78 | Letter | Stagg to McCuiston | Progress Report 3/1/78 to 4/30/78 | Work product; non- testifying expert |
| 252-A | 5/01/78 | Same as 252 | | | |
| 252-B | 5/01/78 | Same as 252 | | | |
| 253 | | Notes | | List of Stagg studies | Work product; non- testifying expert |
| 254 | | Same as 253 | | Load flow, tran- sient, produc- tion & invest- ment cost studies | Work product |
| 255 | 5/04/78 | Notes | Simmons to Barnett | Stagg Studies Progress Reports | Attorney-client, Work product |
| 256 | 5/08/78 | Letter | Hunsicker (B&B) to Stagg | Status of Stagg Studies | Work product; non- testifying expert |
| 257 | 5/08/78 | Letter | Hunsicker to Stagg | Status of Stagg Studies | Work product; non- testifying expert |
| 258 | 5/09/78 | Letter | Williams (HL&P) to Stagg | HL&P input to Stagg studies | Work product; non- testifying expert |
| 259 | 5/18/78 | Pleading Draft | Braitman & Gooch | CSWS Motion to Exclude | Work product; non- testifying expert |

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|----------------------------|-------------|-----------------------------|--|---|---|
| 260 | 5/25/78 | Draft | Stagg to Oprea, Simmons, McCuistion, Williams, Thrash, Copeland, Barnett, Gooch, Hunsicker, Brait- man, & Gerber | Preliminary draft of Stagg Systems Report | Work product; non- testifying expert |
| 261 | 6/07/78 | Memorandum | Thrash to Copeland | Small Systems Brochure | Work Product |
| 262 | 6/22/78 | Note | | List of Stagg Studies | Work product; non- testifying expert |
| 263 | 6/28/78 | Letter | Thrash to Simmons, Sykora, Doan & Webb | NERA informa- tion request | Attorney-client; Work product |
| 264 | 7/07/78 | Memorandum | Simmons to Thrash | NERA informa- tion request | Attorney-client; Work product |
| 265 | 7/10/78 | Letter | McCuistion to Stagg | HL&P assistance on Stagg Study | Work product; non- testifying expert |
| 266 | 7/11/78 | Memorandum | Hunsicker to Braitman, Copeland, Simmons, Stagg, Thrash | FERC staff report | Attorney-client |
| 267 | 7/18/78 | Draft | Stagg | Stagg Report | Work product; non- testifying expert |
| 268 | 7/19/78 | Memorandum Draft | Thrash to Simmons | ERCOT Report | Attorney-client |
| 269 | Delete | | | | |

623034

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identity of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|--|------------------------------|-------------------------------------|
| 270 | 7/31/78 | Letter | Stagg to McCuiston | Status of Stagg Studies | Work product; non-testifying expert |
| 271 | 7/31/78 | Memorandum | Stagg | Status of Stagg Studies | Work product; non-testifying expert |
| 272 | 8/09/78 | Draft | Stagg to Williams | Stagg Report | Work product; non-testifying expert |
| 273 | 8/09/78 | Draft | Stagg to Williams | Stagg Report | Work product; non-testifying expert |
| 274 | Deleted | | | | |
| 275 | 8/11/78 | Letter | Braitman to Simmons | Preparation for SEC hearings | Work product; non-testifying expert |
| 276 | Deleted | | | | |
| 277 | 8/17/78 | Memorandum | Simmons to Gooch, Hunsicker, Barnett, Thrash, Copeland, Braitman, Stagg & Williams | Meeting re: CSW controversy | Attorney-client |
| 278 | 8/17/78 | Note | Williams to Braitman | Preparation for SEC hearings | Work product; non-testifying expert |
| 279 | Deleted | | | | |
| 280 | Deleted | | | | |
| 281 | | Draft | Braitman | Testimony before the PUC | Work product; non-testifying expert |

022035

1201

22/ Documents attached to Document 184 include:

- 1) Map dated 1/27/76
- 2) Excerpts from Public Utility Holding Co. Act dated 1/27/76
- 3) Excerpt of Members of Firm of Isham, Lincoln & Beale
- 4) Changes from 1936-1976 dated 1/27/76
- 5) Memorandum from Thrash to file, 1/26/76, re: FPC and Rate Regulation
- 6) Consolidated Balance Sheet from Dec. 31 of 1973 and 1974
- 7) CSW/FPC alternatives, 1/27/76

23/ 1) Memorandum from Simmons to file, October 13, 1977 re: C&CSW-NERC

- 2) National Electric Reliability Council Certificate of Incorporation August 21, 1974 and By-Laws Revised April 21, 1976

623036

APPENDIX B

WORK PRODUCT PRIVILEGE - HLP OFFICERS AND EMPLOYEES

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|--|----------------------------------|------------------------------------|
| 197 | 4/1/77 | Memorandum | Meyer (HLP) to Kayser (HLP) | Notes of meetings w/ Glenn Stagg | Work product; nontestifying expert |
| 211 | 6/1/77 | Notes | Meyer (HLP) to Williams (HLP) | HLP input to Stagg studies | Work product; nontestifying expert |
| 234 | | Notes | Simmons (HLP) | Review of draft Stagg Study | Work product; nontestifying expert |
| 240 | 12/23/77 | Draft letter | Braitman (outside consultant) to Simmons (HLP) | Distribution of Stagg Study | Work product; nontestifying expert |

62-937

8-30-78

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Bas_s for Claimed Privilege</u> |
|----------------------------|-------------|-----------------------------|--|---|--|
| 243 | 1 '20/78 | Letter | Braitman (outside consultant) to Simmons (HLP) | Involvement of SWPP & NERC in CSW-ERCOT controversy | Work product; nontestifying expert |
| 258 | 5/9/78 | Letter | Williams (HLP) to Stagg | HLP input to Stagg studies | Work product; nontestifying expert |
| 260 | 5/25/78 | Draft | Stagg (outside consultant) to Oprea (HLP), Simmons (HLP-testifying expert), McCuistion (HLP), Williams (HLP), Thrash, Copeland, Barnett, Gooch, Hunsicker (attorneys for HLP), Braitman (outside consultant), Gerber (testifying expert) | Preliminary draft of Stagg systems report | Work product; nontestifying expert |

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|----------------------------|-------------|-----------------------------|--|--|--|
| 265 | 7/10/78 | Letter | McCuistion (HLP) to Stagg (out- side consultant) | HLP assistance on Stagg study | Work product; nontestifying expert |
| 272 | 8/9/78 | Draft | Stagg to Williams | Stagg Report | Work product; nontestifying expert |
| 273 | 8/9/78 | Draft | Stagg to Williams | Stagg Report | Work product; nontestifying expert |
| 278 | 8/17/78 | Note | Williams (HLP) to Braitman (outside consultant) | Preparation for SEC hear- ings | Work product; nontestifying expert |

APPENDIX C
DOCUMENTS RE: A TESTIFYING EXPERT

627040

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|--|---|-------------------------------------|
| 195 | 3/21/77 | Memorandum | Copeland (attorney for HLP) to Simmons (HLP testifying expert) | Committee on Power for the Southwest | Attorney-client |
| 198 | 4/15/77 | Memorandum | Hunsicker to Copeland, Cowan, Thrash (attorneys for HLP), copies to Simmons, Hunsicker | Abe Braitman (outside consultant) comments on FPC staff report of ERCOT-SWPP Interconnection and Reliability Evaluation | Work product; non-testifying expert |
| 207 | 4/27/77 | Memorandum | Copeland to Thrash, copy to Simmons | Revision of PUC testimony Outline No. 4 | Work product |
| 208 | 4/27/77 | Memorandum | Copeland to Thrash | Revision of PUC testimony Outline No. 5 | Work product |

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|---|---|-------------------------------------|
| 236 | 12/5/77 | Memorandum | Thrash (attorney for HLP) to Reese, Jordan, Oprea, Dean (all HLP) & Simmons (HLP-testifying expert) | CSW-general | Attorney-client |
| 238 | 12/13/77 | Draft | Stagg: copies to Williams, Gooch, Braitman, Thrash, Gerber and Simmons (testifying experts) | Stagg study | Work product; non-testifying expert |
| 242 | 1/19/78 | Draft | Stagg to Oprea (HLP), Simmons (HLP testifying expert), McCuistion (HLP), Williams (HLP), Thrash, Copeland, Barnett, Gooch (all attorneys for HLP), Braitman (outside consultant), & Gerber (testifying expert). | Draft of Stagg study | Work product; nontestifying expert |
| 243 | 1/20/78 | Letter | Braitman (outside consultant) to Simmons (HLP-testifying expert) | Involvement of SWPP & NERC in CSW - ERCOT controversy | Work product; nontestifying expert |

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|------------------------|-------------|-------------------------|--|---|------------------------------------|
| 244 | 1/24/78 | Letter | Copeland (attorney for HLP) to Simmons | Draft of letter concerning NERC-TAC review of ERCOT/SWPP inter-connection | Work product |
| 260 | 5/25/78 | Draft | Stagg (outside consultant) to Oprea (HLP), Simmons (testifying expert), McCuistion (HLP), Williams (HLP) Thrash, Copeland, Barnett, Gooch, Hunsicker (attorneys for HLP), Braitman (outside consultant) & Gerber (testifying expert) | Preliminary draft of Stagg Systems Report | Work product; nontestifying expert |
| 266 | 7/11/78 | Memorandum | Hunsicker (attorney for HLP) to Braitman (outside consultant), Copeland (attorney for HLP) Simmons, Stagg, Thrash | FERC staff report | Attorney-client |
| 268 | 7/19/78 | Memorandum Draft | Thrash (HLP attorney) to Simmons (testifying expert) | ERCOT Report | Attorney-client |

627042

| <u>Document Number</u> | <u>Date</u> | <u>Type of Document</u> | <u>Identify of Author and Addressee</u> | <u>Subject</u> | <u>Basis for Claimed Privilege</u> |
|----------------------------|-------------|-----------------------------|--|--------------------------------------|--|
| 275 | 8/11/78 | Letter | Braitman (outside consultant) to Simmons | Preparation for SEC hear- ings | Work product; nontestifying expert |

623043