



NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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, <u>et al.</u>	\$	NRC Docket Nos.	50- 498A
(Comanche Peak Steam Electric	\$		50- 499A
Station, Units 1 and 2)	\$		446

MOTION TO QUASH OR MODIFY SUBPOENA

COMES NOW the Public Utility Commission of Texas ("PUC") by and through its duly authorized federal agency representative, the Attorney General of Texas, and would make and file this Motion to Quash and/or Modify the subpoena as directed toward T. Sweatman, Chief Engineer of the PUC, said subpoena issued July 7, 1979 and the subpoena directed to "Keeper of the Records of the Public Utility Commission" issued July 9, 1979, all by the Acting Chairman of the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission, the Honorable Sheldon J. Wolfe.

The PUC would show that attached to said subpoena is a schedule of Subjects for Testimony and Production of Documents for the subpoena directed to T. Sweatman, Chief Engineer and a schedule of seven items directed to the Keeper of Records. As to the subpoena to T. Sweatman, the Commission would move to quash the subpoena requiring Mr.

Sweatman to appear at 611 Ryan Plaza Drive, 10th Floor in the city of Arlington, Texas scheduled for the 24th day of July, 1979 at 9:30 o'clock a.m. First, the records and objects in the custody of the Commission required to be brought with him to Arlington, Texas, would be burdensome and unjust for many different reasons. The substance of such conclusions are is set forth in affidavits executed by Martha M. Bartow, Records Officer of the Public Utility Commission, attached to this Motion and identified as Exhibit "A", and R. Thomas Sweatman, Director of Engineering and Enforcement, attached and identified as Exhibit "B", both incorporated herein by reference for all purposes. Also attached is Exhibit "A-1", which is a list of the various dockets, maps and an estimate of the number of pages in such proceedings. We do not object to offering Mr. Sweatman's deposition at the offices of the Public Utility Commission of Texas at 7800 Shoal Creek Blvd., Suite 400 N., Austin, Travis County, Texas 78757. It is to be noted that one subpoena directs that the "Keeper of Records" for the PUC make available for inspection and copying at the offices of the Commission in Austin, Texas on the 23rd day of July, 1979 at 10:00 o'clock a.m. numerous records and documents. There is no reason why the same personnel can't remain the next day to take Mr. Sweatman's deposition. Such removal of records will violate PUC policy and would deprive other segments of the public access to portions of the documents

as well. Furthermore, physical removal increases the possibility of loss and damage which is unreasonable and detrimental to the record keeping function of the PUC.

In addition, the above captioned proceedings also relate to certain matters in litigation commonly referred to as Docket 14, in which the Attorney General's office is defending the Public Utility Commission's order in said proceeding in state court, with parallel proceedings pending in other federal forums, including the United States Supreme Court. It is not known at this time what reports, memoranda or records sought under this subpoena may fall under information and material that is privileged in its use in the defense of such lawsuit in state and federal courts. Protective orders may be necessary in the absence of an agreement between counsel. Prior to such agreement or orders, the PUC must resist such carte blanche demand for records.

There is also a question of relevancy of much of the material requested which may be resolved by agreement also.

WHEREFORE, the PUC prays that the subpoenas directed to the Keeper of Records and T. Sweatman be quashed for the above and foregoing reasons, or alternatively, modified to allow reasonable discovery of pertinent and relevant data and to permit the taking of Thomas Sweatman's deposition at the offices of the PUC at 7800 Shoal Creek Blvd.,

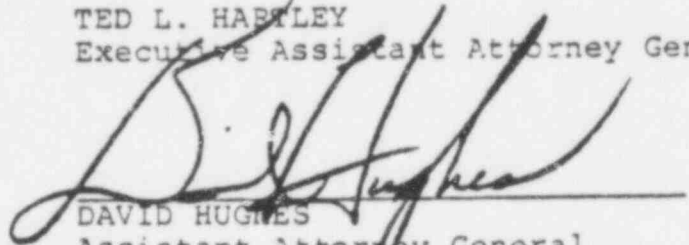
Austin, Travis County, Texas, the only office for such regulatory body in the State of Texas.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

TED L. HARTLEY
Executive Assistant Attorney General



DAVID HUGHES
Assistant Attorney General
Chief, Energy Division

P. O. Box 12548, Capitol Station
Austin, Texas 78711



UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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(Comanche Peak Steam Electric	\$	50-499A
Station, Units 1 and 2)	\$	

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing
Motion to Quash or Modify Subpoena has been made on the fol-
lowing parties listed hereto this 19th day of July, 1979,
by depositing copies thereof in the United States mail,
first class, postage prepaid.

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U.S. Nuclear Regulatory
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U.S. Nuclear Regulatory
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Atomic Safety and Licensing
Appeal Board Panel
U.S. Nuclear Regulatory
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DAVID HUGHES

628 338



EXHIBIT A"

628 339

STATE OF TEXAS

COUNTY OF TRAVIS

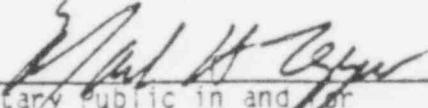
BEFORE ME, the undersigned authority, personally appeared Martha M. Bartow, Records Officer for the Public Utility Commission of Texas, and after being by me duly sworn deposed as follows: My name is Martha Bartow. I am above the age of twenty-one (21) years and am competent to testify. I am the custodian of the official records of the Public Utility Commission of Texas and am responsible to the Commissioners of the Public Utility Commission for the maintenance of the official Commission records. I have reviewed the subpoena issued by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission to me and have several comments to make concerning this subpoena. The subpoena is so broad and inclusive that I am unable to understand what specific matters or material are covered therein. The subject matters contained in subparagraphs 1 through 7 are so global and unclear in nature that if literally taken would require the production of literally thousands of pages of documents at great expense and inconvenience to the Public Utility Commission of Texas. It is the policy of the Public Utility Commission of Texas that its official records should not be removed from its offices; and therefore, I would request the moving party in this subpoena to inspect whatever records deemed relevant and actually necessary by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission at the Commission's offices. As an example of the tremendous undertaking to produce the requested documents, I and members of my staff would be forced to undertake a complete analysis of literally hundreds of dockets and matters that have occurred before the Public Utility Commission of Texas that may, either directly or indirectly, affect or be related to the items requested in subparagraphs 1 through 7 of the subpoena. Such a detailed analysis by the Commission staff would not only be time consuming but expensive as well. As an example, to point out the impossibility of complying with this subpoena, subparagraph 2 of the subpoena concerning all certification records relating to Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, and the Southeast Division of Community Public Service Company involve approximately 110 separate dockets or proceedings before the Public Utility Commission of Texas. In addition the requirements in subparagraph 3 of the subpoena requiring production of "all documents, internal memoranda, reports, maps, etc., which related in any way to the retention or possible retention of existing customers, or securing new customers, or service areas or territories (or parts thereof), by Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, Community Public Service Company (Southeast Division), and also any member cooperatives of the Tex-La Cooperatives" would require a detailed analysis of literally hundreds of other dockets, complaints, internal memoranda contained in other divisions or departments of the

Commission and would be an impossible task to perform in the time constraint set forth in the subpoena and, even if the time constraints were modified, could be done only at a great expense to the Public Utility Commission of Texas. In addition subparagraphs 5 and 7 require me to produce documents dating back to 1974 and 1970 respectively, and yet the Public Utility Commission of Texas did not come into existence until September 1, 1975; therefore, it would be impossible for me to produce documents, if any exist, involving other regulatory authorities who were the primary regulators of the utilities involved prior to September 1, 1975. The Commission has on file numerous minor certification boundary line modifications and many service complaints involving at least indirectly the Commission's certification jurisdiction and customer relations which I doubt would be of any benefit to any party or the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission. Yet the subpoena, if literally read, would require me to produce every service quality complaint affecting certification matters and every boundary change affected or ever requested by the companies involved. Subparagraph 7 of the subpoena, if literally read, would require the production of portions of approximately 68 rate cases, and it would be extremely burdensome to analyze and locate any documents contained in those rate cases relating to the matters contained in said subparagraph 7 and could only be done at a great expense and time consuming effort not only by me but by other members of my staff. I would also state that several of the certification and rate cases included in paragraphs 1, 2, 3, and 7 are on appeal to various courts of different jurisdictions, and the Commission's official records have been filed with the District Clerk or officer of the Court as the case may be. In view of the foregoing, I would request that the subpoena be modified and that the material and documents sought be specified with such particularity that I can make same subject to inspection and production of the parties requesting this subpoena if such documents are in fact in my possession.

EXECUTED this the 18th day of July, 1979.


Martha M. Bartow

SWORN TO AND SUBSCRIBED BEFORE ME by the said Martha M. Bartow on this the 18th day of July, 1979, to certify which witness my hand and seal of office.


Notary Public in and for
Travis County, Texas

My Commission Expires:

6-1-81



E X H I B I T "A-1"

528 342

Houston Lighting and Power Company

Certification:	Docket 41	Pages	Maps
	44		
	317	12	2
	332	11	
	385	10	
	455	12	
	529	14	
	566	18	
	581	16	
	582	13	
	583	13	
	692	294	5
	2495	33	
	2512	27	
	736	10	
	737	8	1
	1482	1743	28
	1606	7	
	1611	23	
	1612	16	
	1652	18	
	1802	14	1
	1864	15	
	1885	33	
	88	90	
	2251		
	2375		
	2384		
	2389		
	2522	525	
Rate/Tariff	111	42	
	2001	6185	1
	2248	929	
	2260		
	2624		
	2676		

628 343

Texas Power and Light Co.

Certification:	Docket	Pages	962	Maps	55
	1				
	5				
	17				
	28				
	44				
	45				
	52				
	57				
	59				
	60				
	61				
	461	21			
	462	15			
	463	12			
	464	20			2
	629	50			2
	631	31			
	542	25			2
	778	12			
	779	45			
	801	10			
	896	22			
	1475	40 + 1 cassette			7
	1818	9			3
	1922	24			
	1923	40			
	1924	14			
	1928	27			
	2262	17			
	2330	18			3
	2349	20			
	2377	25			
	2378	15			
	2435	18			
	2530	16			
	2650				
	EM-5-76				

Texas Power and Light Co. (Cont'd)

Rate:	Docket	178	Pages	10021	Maps	1
		290		67		
		291				
		444				
		445				
		1789		4550		
		1813				
		2018				
		1905				
		1934				
		1939				
		1940				
		1941				
		1942				
		1943				
		1948				
		1949				
		1950				
		1951				
		1952				
		1953				
		1954				
		1955				
		1959				
		1960				
		1961				
		1517		9375		
		2319		150		

Gulf States

Certification:	Docket	17	Pages	Maps
	21			
	52			
	130		21	
	151		17	
	409		1435	39
	427		66	1
	701		175	74
	857		650	4
	1927		26	2
	2227		87	12
	2228			
	2275			
	2276			
	2362		23	1
	2485			
	2601			
	2688			

-Rate:		
	1528	8225
	1889	1120
	1890	
	1891	
	1892	
	1893	
	1945	
	1968	
	1969	
	1970	
	1971	
	2009	
	2010	
	2015	
	2677	

Tex-La Cooperatives

Wood County Electric

Certification	Docket	460	Pages	12	Maps	1
		497		12		
		1711		10		2
		5		1	2 tapes	6
		28		20	1 tape	15
		60	(See Kaufman Co.)			

Rate 2702

Upshur Rural

102				
895	MF	4		1
1380	MF	4		1
1779	MF	4		1
2666				
2667				
2706		10		
2668				
5	(See Wood Co.)			
28	(See Bowie Cass)			
53		1100		45

Kaufman Co. Elect 60 625,2 tapes 36

Jasper-Newton 41 (See Sam Houston)
1827 25 1

Hunt Collin 60 (see above)

Fannin County Electric 319 20
28 (See Wood Co.)
60 (See Kaufman Co.)

Deep East Texas Electric 113 20
2095 20
54 30 7

628 347

Bowie Cass Electric Coop	Docket 256 28	Pages 15 200	Maps 2 15
Farmers Electric Coop.	8 458 60 28	910 MF 4 (See Kaufman Co.) (See Bowie Cass)	30 1
Sam Houston Electric	689 811 1911 41	20 10 780	1 80
Grayson Collin	320 45 60	200 (See Kaufman Co.)	27
Cherokee County (rate)	486 5	(See Wood Co.)	
Rusk County	5	(See Wood Co.)	
Lamar County	28	(See Bowie Cass)	

Community Public Service Company (Southeastern Div.)

Certification:	Docket	1235	13	1
		2069	15	1
		41	495	95

Rate:	Docket	177	525	0
		289	20	0
		448	15	0
		807	40	0
		2101	300	0
		2231	500	0
		2041)	350	
		2042)		
		2102)		

110 Cent Invoice
68 Rate
178 Total with Rate

628 349

Note: All certifications and amended certifications require maps.
Pages are probably grossly under-estimated. Over 50,000 pages
would be involved with the dockets listed, construction
reports, long range plans, tariffs etc.



EXHIBIT "B"

628 351

STATE OF TEXAS

COUNTY OF TRAVIS

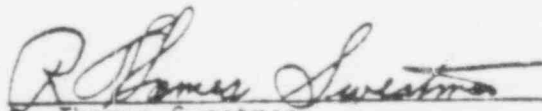
BEFORE ME, the undersigned authority, personally appeared R. Thomas Sweatman, Director of Engineering and Enforcement for the Public Utility Commission of Texas, and after being by me duly sworn deposed as follows: My name is R. Thomas Sweatman. I am above the age of twenty-one (21) years and am competent to testify. I am the Director of Engineering and Enforcement for the Public Utility Commission of Texas. I have reviewed the subpoena issued by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission to me and have several comments to make concerning this subpoena. The subpoena is so broad and inclusive that I am unable to understand what specific matters or material are covered therein. The subject matters contained in subparagraphs 1 through 9 are so global and unclear in nature that if literally taken would require the production of many pages of documents at great expense and inconvenience to the Public Utility Commission of Texas. It is the policy of the Public Utility Commission of Texas that its official records should not be removed from its offices; and therefore, I would request the moving party in this subpoena to inspect whatever records deemed relevant and actually necessary by the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission at the Commission's offices. As an example of the tremendous undertaking to produce the requested documents, I and members of my staff would be forced to undertake a complete analysis of literally hundreds of dockets and matters that have occurred before the Public Utility Commission of Texas that may, either directly or indirectly, affect or be related to the items requested in subparagraphs 1 through 9 of the subpoena. Such a detailed analysis by me and my staff would not only be time consuming but expensive as well. As an example, to point out the impossibility of complying with this subpoena, subparagraph 2 of the subpoena concerning all certification records relating to Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, and the Southeast Division of Community Public Service Company involve approximately 110 separate dockets or proceedings before the Public Utility Commission of Texas. In addition the requirements in subparagraph 3 of the subpoena requiring production of "all documents, internal memoranda, reports, maps, etc., which related in any way to the retention or possible retention of existing customers, or securing new customers, or service areas or territories (or parts thereof), by Houston Lighting and Power Company, Gulf States Utilities Company, Texas Power & Light Company, Community Public Service Company (Southeast Division), and also any member cooperatives of the Tex-La Cooperatives" would require a detailed analysis of literally hundreds of other dockets, complaints, internal memoranda contained not only in my division but in other divisions or departments of the Commission and would be an impossible task to perform in the time constraint set forth in the subpoena and, even if the time constraints were modified, could be done only at a great expense to the

628 352

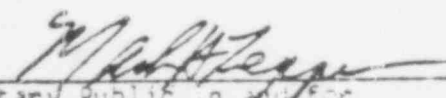
Public Utility Commission of Texas. In addition subparagraphs 4, 5 and 7 require me to produce documents dating back to 1968, 1974, and 1970 respectively, and yet the Public Utility Commission of Texas did not come into existence until September 1, 1975; therefore, it would be impossible for me to produce documents, if any exist, involving other regulatory authorities who were the primary regulators of the utilities involved prior to September 1, 1975. The Commission has on file numerous minor certification boundary line modifications and many service complaints involving at least indirectly the Commission's certification jurisdiction and customer relations, acquisition of new customers and retention of present customers, which I doubt would be of any benefit to any party or the Atomic Safety and Licensing Board of the Nuclear Regulatory Commission. Yet the subpoena, if literally read, would require me to produce every service quality complaint affecting certification matters and every major or minor boundary change affected or even requested by the companies involved. Subparagraph 7 of the subpoena, if literally read, would require the production of portions of approximately 68 rate cases, and it would be extremely burdensome to analyze and locate any documents contained in those rate cases relating to the matters contained in said subparagraph 7 and could only be done at a great expense and time consuming effort not only by me but by other members of my staff. I would also state that several of the certification and rate cases included as a part of in paragraphs 1, 2, 3, and 7 are on appeal to various courts of different jurisdictions, and the Commission's official records have been filed with the District Clerk or officer of the Court as the case may be. In addition, such documents, work product, and internal memos among the Commission Staff and the attorneys representing the Staff are not subject to the Texas Open Records Act nor discovery, if involved in pending or contemplated litigation. In view of the foregoing, I would request that the subpoena be modified and that the material and documents sought be specified with such particularity that I can make same subject to inspection and production of the parties requesting this subpoena if such documents are in fact in my possession at the Commission's offices in Austin, Texas.

In addition, since I am subject to be deposed, I would request that such deposition be taken, if actually deemed necessary, at the Commission's offices in Austin, Texas, so I may refer to my files and the Commission's official files, as the case may be, during the course of such deposition without transporting all of such files to Arlington, Texas, which would be very burdensome, time consuming, and expensive on the part of the Public Utility Commission of Texas.

EXECUTED this the 18th day of July, 1979.


R. Thomas Sweatman

SWORN TO AND SUBSCRIBED BEFORE ME by the said R. Thomas Sweatman on this the 18th day of July, 1979, to certify which witness my hand and seal of office.


Notary Public in and for
Travis County, Texas

My Commission Expires: 6-1-81

353