

NRC PUBLIC DOCUMENT ROOM

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
HOUSTON LIGHTING & POWER COMPANY,)	NRC DOCKET NOS. 50-498A
THE CITY OF SAN ANTONIO, THE CITY)	50-499A
OF AUSTIN, and CENTRAL POWER AND)	
LIGHT COMPANY)	
(South Texas Project, Unit Nos.)	
1 and 2))	
)	
TEXAS UTILITIES GENERATING COMPANY,)	
<u>ET AL.</u>)	NRC DOCKET NOS. 50-445A
(Comanche Peak Steam Electric)	50-446A
Station, Unit Nos. 1 and 2))	

MOTION FOR PROTECTIVE ORDER

Central and South West Corporation, Central and South West Services, Inc., Central Power and Light Company ("CPL"), West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively "the Movants"), pursuant to 10 C.F.R., Sections 2.740(c) and 2.790(b)(6), move for the issuance of a Protective Order (attached hereto) concerning the public disclosure of certain documents and information which Movants have been requested to produce or disclose by the Public Utilities Board of Brownsville, Texas ("PUB").

1347 177

7911160231

On or about February 28, 1979, CPL moved for the issuance of a Protective Order^{1/} with respect to certain documents and information requested by PUB on January 3, 1979.

In addition, on March 14, 1979, PUB applied for the issuance of subpoenas requesting the production of documents by Movants (with the exception of CPL). The application was denied, but the Board directed that Movants (other than CPL) comply with PUB's reasonable discovery requests. Since that time Movants have produced a number of documents to PUB and are prepared to produce the remainder. CPL has produced for inspection all of the documents requested of it and has copied a number of those documents for the PUB.

The documents which have been produced by Movants to date have been produced under informal agreement with counsel for the PUB as to the treatment to be accorded those documents considered by Movants as "confidential". This production was also made during the period of time negotiations were being pursued with counsel for the PUB concerning

^{1/} Central Power and Light Company's Objections and Motion for Protective Order Regarding Certain of the Interrogatories and Requests for Production of Documents from the Public Utilities Board of the City of Brownsville, filed with this Board on or about February 28, 1979. The Board has not ruled on this Motion.

the terms of an appropriate protective order.^{2/} These negotiations have been extensive and time-consuming and, ultimately, unproductive. Only last week, counsel for Movants, in a final effort to resolve the impasse, advised counsel for the PUB that Movants would be willing to enter into a Protective Order providing for confidential treatment identical to that previously ordered by this Board on April 9, 1979 with respect to production of documents by Houston Lighting & Power Company to the PUB. See Attachment "A". Counsel for PUB has refused that offer. Movants now request that this Board enter a Protective Order identical in substance to that entered on April 9, 1979. A copy of the Protective Order which Movants now request this Board to enter is attached hereto.

Movants allege that the following categories of documents or information requested by PUB relate to or contain information of a confidential or proprietary nature^{3/}

2/ The Movants and PUB have agreed on the classes of documents to be accorded confidential treatment. The only issues relate to the nature of the confidential treatment.

3/ See the Affidavit of W. C. Price, Vice-President of CPL, which accompanied CPL's Objections and Motion for Protective Order Regarding Certain of the Interrogatories and Requests for Production of Documents from PUB.

which, if disclosed, could seriously impair Movants' individual and respective relationships with existing or potential customers and suppliers of fuel, and adversely and substantially affect Movants' respective competitive positions, and which should therefore be subject to the attached Protective Order:

(a) All documents and information referring or relating to or setting forth (i) current efforts or activities by any Movant to encourage any industrial concern to locate, expand or retain a plant or other facility in the service territory of any Movant, and (ii) the particular industrial concern's response to such efforts or activities;

(b) All documents and information referring or relating to or setting forth the rates or other terms and conditions which any Movant has offered to any industrial concern within the past 5 years, or under which any Movant now supplies electric service to any industrial concern;

(c) All documents and information referring or relating to or setting forth the current or future terms and conditions of gas or other fuel supply to any Movant, including entitlements, ownership interests or any other form of control of or access to gas or other fuel.

1347 180

WHEREFORE, Movants respectfully request that this Board enter the Protective Order attached hereto.

Respectfully submitted,

ISHAM, LINCOLN & BEALE

By David Starr
Attorneys for Central and
South West Corporation, et al.

Isham, Lincoln & Beale
1050 17th Street, N.W.
Suite 701
Washington, D.C. 20036

Dated: October 16, 1979

1347 181

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION



BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:)	
)	
HOUSTON LIGHTING & POWER COMPANY,)	NRC DOCKET NOS. 50-498A
THE CITY OF SAN ANTONIO, THE CITY)	50-499A
OF AUSTIN, and CENTRAL POWER AND)	
LIGHT COMPANY)	
(South Texas Project, Unit Nos.)	
1 and 2))	
)	
TEXAS UTILITIES GENERATING COMPANY,)	
<u>ET AL.</u>)	NRC DOCKET NOS. 50-445A
(Comanche Peak Steam Electric)	50-446A
Station, Unit Nos. 1 and 2))	

PROTECTIVE ORDER

On January 3, 1979, the Public Utilities Board of Brownsville, Texas ("PUB") filed its Initial Interrogatories to and First Request for Production of Documents by Central Power & Light Company ("CPL"). In response, CPL filed Objections to and Motion for Protective Order alleging, inter alia, that certain matters inquired into by the PUB Interrogatories and certain documents requested by the PUB Request for Production relate to or contain information which is of a confidential or proprietary nature, the release or disclosure of which to third parties could seriously impair CPL's respective relationships with existing or potential customers or jeopardize CPL's competitive position.

1347 182

Further, this Board has directed CPL's affiliated companies to comply with reasonable discovery requests of PUB. PUB, accordingly, has requested the production of documents by Central and South West Corporation, Central and South West Services, Inc., West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, with CPL, "the Movants"). The Movants have filed contemporaneously herewith a Motion for Protective Order concerning the public disclosure of certain documents and information which the Movants have been requested to produce or disclose by PUB. Some of the documents and information requested by PUB may relate to or contain information which is of a confidential or proprietary nature, the release or disclosure of which to third parties could seriously impair the Movants' respective relationships with existing or potential customers or jeopardize the Movants' competitive position.

WHEREFORE, IT IS ORDERED that the following categories of documents^{1/} and information may be confidential and shall be subject to the restrictions contained in paragraphs one through eight following:

^{1/} As used in this Protective Order the term "documents" shall have the same meaning as ascribed to it in PUB's Initial Interrogatories to and First Request for Production of Documents by CPL.

(a) All documents and information referring or relating to or setting forth (i) current efforts or activities by any Movant to encourage any industrial concern to locate, expand or retain a plant or other facility in the service territory of any Movant, and (ii) the particular industrial concern's response to such efforts or activities;

(b) All documents and information referring or relating to or setting forth the rates or other terms and conditions which any Movant has offered to any industrial concern within the past 5 years, or under which any Movant now supplies electric service to any industrial concern;

(c) All documents and information referring or relating to or setting forth the current or future terms and conditions of gas or other fuel supply to any Movant, including entitlements, ownership interests or any other form of control of or access to gas or other fuel.

1. Confidential documents and information therein shall not be disclosed to any person other than (a) counsel for parties to this proceeding, including necessary secretarial, paralegal and clerical personnel assisting such counsel; (b) independent consultants and technical experts and their staff who are engaged directly in 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.

1347 184

2. Confidential documents and information contained therein shall not be made available to any person designated in 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 than another person designated in paragraph 1, and (c) to utilize such confidential documents and information solely for the purposes of this proceeding.

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 matter 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 shall 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

1347 185

"(MOVANT) CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER." Before a court reporter receives any such document or information, he or she shall have first read this Order and 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 MOVANTS and the presiding officer and, without prejudice to other rights and remedies of MOVANTS, make every effort to prevent further disclosure by counsel or by the person to whom the document or information was communicated.

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.

8. Upon final termination of this proceeding, each person that is subject to this Order shall assemble and return to counsel for MOVANTS 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. All copies containing notes or other attorney's work-product shall be destroyed. 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.

IT IS SO ORDERED.

FOR THE ATOMIC SAFETY AND
LICENSING BOARD

Dated at Bethesda, Maryland

this _____ day of _____

1347 187