

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

DUCKETED  
USNRC

'92 JUN 29 P4:21

In the Matter of  
HOUSTON LIGHTING &  
POWER COMPANY, et al.  
(South Texas Project, Units 1  
and 2)

Nos. 50-498-OL  
50-499-OL

AND

OI Case No. 4-92-003

TEN SUBPOENAS ISSUED BY THE  
DIRECTOR OF THE OFFICE OF  
INVESTIGATIONS

MOTION FOR LEAVE TO SUPPLEMENT  
MOTION TO MODIFY OR QUASH SUBPOENAS,  
AND SUPPLEMENTAL INFORMATION

On June 18, 1992, Houston Lighting & Power Company ("HL&P") et al. and ten individuals subpoenaed by the NRC Office of Investigations ("OI") filed a motion requesting that the Commission modify those subpoenas so that individuals interviewed by OI could have copies of their transcripts, or in the alternative that the Commission quash the subpoenas ("Motion"). Since the filing of the Motion, Movants have identified additional information which is pertinent to the policy issues under consideration by the Commission in connection with the Motion. Movants hereby request leave to provide this supplemental information, which is described below.

Movants have made inquiries with a number of federal administrative agencies that are charged with responsibility for conducting investigations comparable to those conducted by OI,

including investigations of various types of wrongdoing. Based on these inquiries, Movants have determined that OI's practice of automatically withholding transcripts from interviewees is inconsistent with the normal practice of several such agencies and the NRC's Office of the Inspector General (OIG). Discussions with an OIG representative indicate that a witness interviewed by OIG is ordinarily provided with a copy of any statement or transcript that is prepared. Accordingly, the OI policy at issue appears to conflict with the practice of the other NRC office responsible for performing an investigatory function.

In addition, the normal investigative practice of several other agencies is to provide a witness with copies of written statements or transcripts reflecting the testimony of that witness. While a number of agencies do not have any formal policy on whether transcripts or statements should be provided to witnesses who testify voluntarily, contacts with these agencies indicate that the normal practice is to allow such witnesses to retain copies of their written statements or transcripts, unless some specific reason to withhold the transcripts is identified. Agencies that typically follow such a practice include the Federal Energy Regulatory Commission, the Department of Labor, the Internal Revenue Service, and the Securities and Exchange Commission. <sup>1/</sup>

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<sup>1/</sup> To the extent that these agencies have formal policies on the provision of transcripts, those policies require that, absent some good cause for withholding, witnesses shall be provided with copies of transcripts of their interviews.  
(continued...)

In this case, OI has identified no specific compelling reason for withholding copies of transcripts from the individuals it seeks to interview, and Movants have offered conditions which, as a practical matter, will resolve any realistic concerns that OI may have concerning the integrity of its investigations. Motion at 3-4. Accordingly, OI's policy is not only unfair and violative of the subpoenaed individuals' statutory rights, but also goes far beyond what OIG and federal agencies with comparable investigatory authority apparently believe is necessary for reasonable protection of investigatory integrity.

For the above reasons and for the reasons enumerated in Movants' June 18, 1992 Motion, Movants respectfully request that the Commission modify or quash the OI subpoenas.

Respectfully Submitted,



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ATTORNEYS FOR LICENSEES AND THE  
TEN INDIVIDUALS NAMED IN SUBPOENAS  
ISSUED BY THE DIRECTOR OF THE  
OFFICE OF INVESTIGATIONS

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1/ (...continued)

See, e.g., 17 CFR § 203.6 (SEC); 18 CFR § 1b.12 (FERC); 26 CFR § 601.07(b) (IRS). Such a policy is required under the Administrative Procedure Act ("APA") in cases where a person is compelled to testify. See Motion at 6.

CERTIFICATE OF SERVICE

RECEIVED  
USNRC

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I hereby certify that on June 29, 1992, Houston Lighting & Power Company, et al., and the individuals named in ten subpoenas issued by the Director of the Office of Investigations (OI Case No. 4-92-003) served copies of a "MOTION FOR LEAVE TO SUPPLEMENT MOTION TO MODIFY OR QUASH SUBPOENAS, AND SUPPLEMENTAL INFORMATION" on the following by hand delivery, except where indicated by an asterisk ("\*"), where service was made by deposit in the United States mail, certified, returned receipt requested, properly stamped and addressed.

Office of the Secretary  
U.S. Nuclear Regulatory Commission  
One White Flint North  
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Attention: Chief, Docketing and Service Section  
(Original plus two copies)


Ivan Selin, Chairman  
Kenneth C. Rogers, Commissioner  
James R. Curtiss, Commissioner  
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June 29, 1992

  
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