

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  
50-446A

MOTION OF THE DEPARTMENT OF JUSTICE TO COMPEL THE CITY OF  
AUSTIN TO PROVIDE FULLER RESPONSES TO THE DEPARTMENT'S FIRST  
SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS

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February 6, 1979

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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I. Introduction

The Department of Justice ("Department") respectfully  
moves this Board, pursuant to 10 C.F.R. §2.740(f), for an  
order compelling the City of Austin ("Austin") to provide  
further and fuller responses to the FIRST SET OF INTERROG-  
ATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS FROM THE  
DEPARTMENT OF JUSTICE TO THE CITIES OF AUSTIN AND SAN  
ANTONIO ("Interrogatories"), served by mail on November 30,  
1978.

On January 12, 1979, the RESPONSE OF THE CITY OF  
AUSTIN TO THE DEPARTMENT OF JUSTICE'S FIRST SET OF INTERRO-  
GATORIES AND REQUESTS FOR PRODUCTION ("Response") was served,  
by mail.

The Department contends that Austin has ignored or failed to comply with the rules of the Nuclear Regulatory Commission ("Commission") and with the Department's instructions in supplying written interrogatory answers. In addition, the Department urges that Austin has not discharged its burden to search comprehensively every possible place where relevant documents might be found in order to produce all documents requested by the Department.

## II. Deficiencies of Tendered Responses

The Department objects, in particular, to the responses provided by Austin to interrogatories 5, 7, 12, 13, 19 and 22. The deficiencies which permeate Austin's responses to these interrogatories are, by and large, the same. Therefore, rather than addressing each interrogatory, and Austin's individual answers, thereby unnecessarily burdening the Board, the Department will address these responses as a group.

There are three principal types of deficiencies which appear throughout the cited interrogatory answers. First, Austin, in response to a particular inquiry, will indicate that a certain event or communication has taken place but

will not give the details and/or the complete information which the interrogatories and the accompanying instructions request.

For example, the fifth interrogatory reads:

(a) State every occasion since 1965, if any, on which San Antonio or Austin communicated with or considered communicating with any other Electrical Utility to dissuade that utility from commencing to operate, or to discontinue its then current operation, in interstate commerce. (b) With respect to each such occasion identified in response to (a), describe and/or identify all individuals involved in any such communications or contemplated communications, the surrounding circumstances, the substance of any such communications, the individuals (and the entities for which they worked) to whom such communications were made, and the response(s) of those individuals or entities. (c) Provide all documents which relate to the response to this interrogatory. (Interrogatories at 10).

Austin responded as follows:

(a) The staff of the City of Austin communicated with the Lower Colorado River Authority and San Antonio after May 4, 1976 in an attempt to restore the Texas Interconnected System to a more reliable mode of operation.

(b) The City of Austin is not aware of any documentation of the above discussions nor the participants of such discussions other than the general knowledge that such took place and that various levels of staff participated from time to time in connection with Docket No. 14 before the Public Utility Commission of Texas.

(c) None of which the City of Austin is aware. (Response at 2).

Consider also the Department's nineteenth interrogatory:



Pertaining to the May 4, 1976, disconnections by Houston Lighting & Power and TU from Electrical Utilities with which they had been interconnected, state:

(a) whether prior to these disconnections, any communication took place between any employees or agents of HL&P and/or TU and employees of San Antonio or Austin, regarding what action these Electrical Utilities ought to undertake in response to WTU's radial tie and transmission of electrical power and energy into interstate commerce;

(b) whether subsequent to these disconnections, any communication took place between any employees or agents of HL&P and/or TU and employees of San Antonio or Austin regarding under what conditions HL&P and/or TU would reconnect with any Electrical Utility, including but not limited to San Antonio and Austin;

(c) if the answer to either part (a) or (b) of this interrogatory is affirmative, then relate in detail the substance of each such communication, the individuals involved, the date on which each such communication took place, the response to each such communication, and the surrounding circumstances; and

(d) provide all documents relating to (a)-(c) above. (Interrogatories at 18-19).

Austin's entire answer reads:

(a) Immediately prior to its disconnection, TU employees notified Austin of the disconnection.

(b-d) There were probably numerous communications between City of Austin employees and HL&P and TU employees but there are no records of which Austin is aware as to whom the participants were or when or where these conversations took place. (Response at 6).

Both of the foregoing responses do not contain the degree of specificity envisioned by the Commission's discovery rules

and in the instructions accompanying the interrogatories. Those instructions require that detailed and comprehensive information be provided as part of any interrogatory response which refers to people, documents, possible or contemplated actions and the like. Austin has ignored these instructions, and provided skeletal answers. Further, Austin seems to have excused itself from the duty to inquire further (of its employees or of others who might possess relevant knowledge) so as to uncover responsive details.

The second type of deficiency which pervades Austin's responses relates to Austin's tendency to direct the Department's attention to purportedly relevant documents rather than to respond in detail to the Department's requests. As an example of this, consider Austin's answer to the Department's twenty-second interrogatory: 1/

(a) Attached is an agreement with the University of Texas at Austin which allows for a decrease in pricing for more electricity used by U.T. which may have the effect of decreasing generation. Appendix H. (Response at 7).

The referenced agreement does not respond directly to the twenty-second interrogatory. 2/ By answering in this fashion,

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1/ See also, Austin's answers to Interrogatories 12 and 13 at 4 and 5, respectively.

2/ The twenty-second interrogatory stated, in relevant part:

Specifying the substance of each communication, the individuals, companies, organizations or entities involved, the date on which each communication occurred, the response to each communication, and the surrounding  
(footnote can't on next page)

Austin has again ignored its obligation to supply the details sought by the Department and has failed to meet the standard specified in 10 C.F.R. § 2-740(b) that each interrogatory "be answered separately and fully in writing".

The third serious deficiency consists of Austin's failure to undertake a thorough and complete examination of its files to find any documents which might pertain to the Interrogatories. While the Department cannot be certain that Austin did not attempt to discharge this responsibility faithfully, the surprisingly small number of documents produced, 3/ and at least one problem discovered by the Department, which is discussed below, suggest that an additional document search is warranted.

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circumstances, state every occasion upon which San Antonio or Austin contacted any individual, company, organization, or entity for the purpose of soliciting, requesting, encouraging or persuading the recipient(s) to:

(a) discontinue or decrease self-generation and commence to receive part or all of its electrical requirements from San Antonio or Austin; (Interrogatories at 20).

3/ The Response to the Department's extensive Interrogatories (over twenty pages of instructions, definitions and interrogatories) consists of only seven double-spaced, typed pages, accompanied by only 101 pages of documentation.

Austin's response to the nineteenth interrogatory exemplifies this third deficiency. That interrogatory set out in full at 4, supra, asks, among other things, about communications which took place following the May 4, 1976, disconnection. Austin's answer, also set forth in full at 4, supra, states that, while there probably were numerous communications falling within the request, there are no records, of which Austin is aware, regarding such communications.

Contrary to Austin's response, the Department is aware, of at least one written communication, between Austin and HL&P, which expressly dealt with the subject matter covered by this interrogatory. As evidence of this fact, the Department attaches hereto, as Appendix A, a copy of a letter from D.E. Simmons of HL&P, dated May 5, 1976, to, among others, Mr. Dan Davidson, City Manager, City of Austin, specifically dealing with the conditions under which HL&P would reconnect with other electric utilities following the May 4, 1976, disconnection. The Department knows of this document because a copy of it was tendered to the Department by the City of San Antonio (to which the letter was also addressed) in response to the identical interrogatory.



This document clearly establishes that communications falling within the scope of the nineteenth interrogatory did take place (the letter also makes mention of a telephone conversation the day before), that at least some of that communication was written and that it was directed to Austin. Nevertheless, and despite the fact that the letter was sent to the personal attention of Dan Davidson, who is still the City Manager of Austin, the Department was neither provided with a copy of the letter nor with an explanation as to its whereabouts or possible destruction. Section B of the instructions contained in the Interrogatories specifically states:

If any document described in this section was, on or after December 19, 1970 (date of enactment of P.L. 91-560), but is no longer in San Antonio or Austin's possession, or subject to its control, or in existence, state whether it (a) is missing or lost, (b) has been destroyed, (c) has been transferred to others, or (d) has been otherwise disposed of. In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing same, and the date(s) of such direction or authorization. Identify each such document by listing its author and addressee, type (e.g., letter, memorandum, telegram, chart, photograph, etc.), date, subject matter, whether the document (or copies) is still in existence and, if so, its present location and custodian(s). (Interrogatories at 5-6).

In addition, Austin failed to produce any correspondence in response to the Interrogatories. 4/ It is difficult to believe that, Austin's files contain no correspondence or other documents which are responsive to the Interrogatories.

#### CONCLUSION

The Department respectfully requests that the Board direct Austin to discharge its responsibility to respond to the interrogatories at issue, specifically interrogatories 5, 7, 12, 13, 19, and 22, in the comprehensive and detailed fashion outlined in the definitions and instructions of the Interrogatories. Austin has tendered no objections to those definitions and instructions, thereby evincing its acceptance of their validity. Those definitions and instructions ask nothing more than that Austin provide the kind of full responses to interrogatories required by the Commission's rules.

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4/ The closest Austin came to providing the Department with any correspondence in response to the Interrogatories was to furnish copies of two letter agreements (Texas Power & Light Agreement of October 28, 1977, Appendix E, and Texas Power & Light Agreement of March 20, 1978, Appendix F, see answer to Interrogatory 18 at 6).

Additionally, the Department respectfully requests that the Board direct Austin to undertake another search of its file to find all documents responsive to the Interrogatories. With respect to those documents known to have existed but not found in the search, Austin should be required to provide the information sought in Section B of the instructions, regarding missing documents. Finally, the Department requests that counsel for Austin be directed to file with the Board an affidavit describing precisely the efforts undertaken to search fully all places where relevant documents might reasonably have been found.

Respectfully submitted,

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February 6, 1979

HOUSTON LIGHTING & POWER COMPANY

HOUSTON, TEXAS 77001

D. E. SIMMONS  
VICE PRESIDENT  
GENERAL MANAGER

MAY 5 1976

TICKLER  
REFERRAL TO

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Lower Colorado River Authority  
P. O. Box 220  
Austin, Texas 78767

Mr. Dan Davidson  
City Manager  
City of Austin  
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Mr. G. R. Coffman  
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Corpus Christi, Texas 78403

Mr. J. B. Poston  
City Public Service Board  
of San Antonio  
P. O. Box 1771  
San Antonio, Texas 78296

Gentlemen:

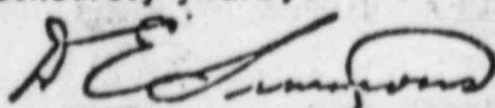
This is to notify you that as of this date HLAFCO is continuing to operate with all of our external interconnections open. We indicated to representatives of most of your companies in a telephone call yesterday that in the event of an emergency, Houston Lighting & Power Company would consider reestablishing these interconnections if this would provide some relief.

Our legal counsel this morning has advised us that certain procedures must be followed in reestablishing these interconnections in order to protect our legal rights. These procedures essentially require that reestablishing these interconnections will require authorization from the Federal Power Commission declaring that an emergency exists and ordering us to reestablish the interconnection under an emergency condition.

We do not know how long we may have to remain in operation with these interconnections open. We did feel that you should know about these legal restrictions on reestablishing these interconnections.

The above information was transmitted to each of you by telephone today.

Sincerely yours,



DES:lw

LA-83  
7/14/77  
13375 - S.A.



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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing  
MOTION OF THE DEPARTMENT OF JUSTICE TO COMPEL THE CITY OF  
AUSTIN TO PROVIDE FULLER RESPONSES TO THE DEPARTMENT'S  
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION  
OF DOCUMENTS has been made on the following parties listed  
hereto this 6th day of February, 1979, by depositing  
copies thereof in the United States mail, first class,  
postage prepaid.

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