

570
NEWMAN & HOLTZINGER, P.C.

1615 L STREET, N.W.

WASHINGTON, D.C. 20036

202-955-6600

JACK R. NEWMAN
JOHN E. HOLTZINGER, JR.
HAROLD F. REIS
MAURICE AXELRAD
J. A. BOUKNIGHT, JR.
PAUL H. KECK
GEORGE L. EDGAR
KATHLEEN H. SHEA
DAVID G. POWELL
DOUGLAS G. GREEN
KAROL LYN NEWMAN
JOHN T. STOUGH, JR.
JAMES B. VASILE
MICHAEL A. BAUSER
ALVIN H. GUTTERMAN
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THOMAS A. SCHMUTZ
MICHAEL F. HEALY
ROBERT I. WHITE
SCOTT A. HARMAN

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December 20, 1985

WILLIAM E. BAER, JR.
DOUGLAS L. BERESFORD
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MERLE W. FALLON
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JANE I. RYAN
DONALD J. SILVERMAN
JACOLYN A. SIMMONS
JOSEPH E. STUBBS

ROBERT LOWENSTEIN
NORMAN A. FLANINGAM
OF COUNSEL

Charles Bechhoefer, Esq.
Chairman, Administrative Judge
Atomic Safety and Licensing Board Panel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
Administrative Judge
313 Woodhaven Road
Chapel Hill, NC 27514

Frederick J. Shon
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

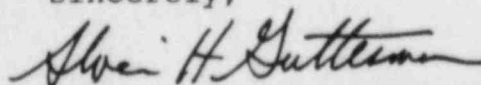
Re: Houston Lighting & Power Co., et al.
South Texas Project, Units 1 & 2
Docket Nos. 50-498 OL, 50-499 OL

Dear Members of the Board:

By letter of January 19, 1983, we informed the Board that the City of Austin had filed a lawsuit against Houston Lighting & Power Company seeking reformation of the South Texas Project Participation Agreement and other relief.

On December 6, 1985, the City of Austin filed an amended Petition. Although we continue to believe that contractual disputes among the co-owners are not relevant to the matters pending before the Board, a copy of the amended Petition is enclosed for your information.

Sincerely,



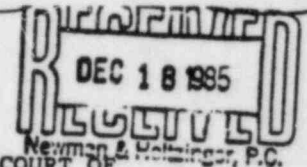
Alvin H. Gutterman
Attorney for Applicants

8512260181 851220
PDR ADDCK 05000498
G PDR

Enclosure

DS02

NO. 343,240



CITY OF AUSTIN

v.

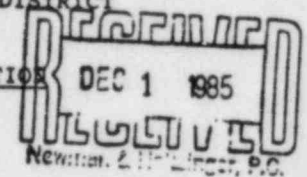
HOUSTON LIGHTING AND POWER
COMPANY and HOUSTON
INDUSTRIES, INC.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION



TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW the City of Austin, as plaintiff, complain-
ing of and against Houston Lighting & Power Company, and
Houston Industries, Inc., as defendants, and for causes of
action would show:

I.

The City of Austin (hereinafter called "Austin") is a
municipal corporation existing under and by virtue of the laws
of the State of Texas as well as its Home Rule Charter and is
located in Travis County, Texas. Austin is owner of a sixteen
percent (16%) undivided interest in the South Texas Project
("STP"), a nuclear power plant under construction in Matagorda
County, Texas, consisting of two proposed 1,250-megawatt units.

Defendant Houston Lighting & Power Company (herein-
after called "HL&P") is a corporation existing under the laws
of the State of Texas, having its principal place of business
at 611 Walker Avenue, Houston, Harris County, Texas. HL&P is
the owner of a thirty and eight tenths percent (30.8%) undivi-
ded interest in STP. HL&P has done business in Travis County
and has an agency or representative in Travis County. Mr. John
Newton, Director, State Relations for HL&P, resides in Travis
County and offices at one of HL&P's offices in Travis County.
Mr. Newton has the power to conduct the business of HL&P in
Travis County. HL&P has previously appeared generally and
answered herein and need not be served with citation.

Defendant Houston Industries, Inc. (hereinafter called "Houston Industries"), is a corporation existing under the laws of the State of Texas, having its principal place of business at 611 Walker Avenue, Houston, Harris County, Texas. Houston Industries has previously appeared generally and answered herein and need not be served with citation.

II.

Austin's causes of action asserted herein or a part thereof accrued or arose in Travis County. HL&P has an agency or representative in Travis County. HL&P has done business in Travis County and is doing business in Travis County.

III.

In July of 1973, HL&P entered into a written contract entitled "South Texas Project Participation Agreement" (hereinafter called "Participation Agreement"), providing for design and construction of a nuclear electric generating plant, to be built in Matagorda County, Texas. A true copy of the Participation Agreement is attached as Exhibit "A" to Austin's Second Request for Admissions to HL&P. Defendants are here given notice to produce the original of the Participation Agreement at trial, or else secondary evidence will be offered. Austin was not a party to the original Participation Agreement. Under the original Participation Agreement, HL&P, CP&L and San Antonio owned STP in the following shares:

HL&P--40%

CP&L--30%

San Antonio--30%

IV.

On or about November 17, 1973, Austin voters approved a bond election which authorized Austin to participate in STP. On or about November 19, 1973, the Austin City Council voted to proceed to become a participant in STP. Both of these actions were taken in Travis County. In December of 1973, after negotiations and a meeting of the STP "Management Committee" in

Travis County, Austin and defendants executed "Amendment No. 1 to Participation Agreement," by which Austin became a party to the Participation Agreement. Austin executed said Amendment in Travis County. A true copy of said Amendment No. 1 is attached as Exhibit "B" to Austin's Second Request for Admissions to HL&P. Defendants are here given notice to produce the original at the time of trial, or secondary evidence will be offered. In said Amendment No. 1, HL&P, CP&L and San Antonio each transferred a portion of the ownership in STP to Austin, and Austin thereby became owner of an undivided sixteen percent (16%) interest in STP. The ownership proportions which were established by said Amendment No. 1 were:

HL&P--30.8%

CP&L--25.2%

San Antonio--28%

Austin--16%

These percentage interests have remained the same up to and including the present day.

V.

The Participation Agreement was further amended on or about March 1, 1975 by "South Texas Project Amendment No. 2 to Participation Agreement." A true copy of said Amendment No. 2 is attached as Exhibit "C" to Austin's Second Request for Admissions to HL&P. Notice is here given to defendants to produce the original at the time of trial, or secondary evidence may be offered. Acting through its proper representatives, Austin voted to execute, and did execute, said Amendment No. 2 in Travis County.

VI.

By the Participation Agreement, HL&P, for valuable consideration, assumed and undertook broad responsibilities to the other owners, Austin, San Antonio, and CP&L. Under the Participation Agreement, HL&P was designated "Project Manager." The Project Manager was designated in the Participation

Agreement, as amended, as, "The Participant responsible for the planning, construction and operation of the various components of the South Texas Project in accordance with this Participation Agreement and the Project Agreements." (Section 4.25 of Participation Agreement, Amendment No. 2). Further, HL&P as Project Manager undertook and assumed the fundamental responsibility to the other owners to:

Provide for the engineering, design, contract preparation, purchasing, construction, reconstruction, repair, retirement, replacement, supervision, training, expediting, inspection, testing, start-up, protection, operation, maintenance and accounting of, or with respect, to each component

(Participation Agreement §10.2.4). Thus, HL&P undertook and has the broad fundamental and fiduciary responsibility to the other owners, including Austin, to provide for planning, construction and operation of STP, in all respects.

VII.

HL&P further, under the Participation Agreement, undertook and expressly warranted that it would properly discharge the following responsibilities with respect to site acquisition and providing material information and competent recommendations to the other owners:

10.2.1 Provide for and obtain all studies (including environmental impact studies and preliminary safety analyses) and shall supervise the preparation and submission, and shall monitor the regulatory review of, applications for all permits and licenses necessary for the construction and operation of the South Texas Project;

10.2.2 Coordinate the acquisition of the South Texas Plant Site in accordance with the parameters set forth in Section 27.1 hereof, such acquisition to be for the initial benefit, and at the cost, of the Participants in the proportions set forth in Section 5.1;

10.2.3 Supply the Participants with copies of all studies made, license and permit applications filed and licenses and permits obtained;

* * *

10.2.5 Promptly supply the Participants with information on major matters and significant factors which affect construction and operating schedules;

10.2.6 Provide the Management Committee and any committee created by it with all necessary records and information pertaining to matters within its designated responsibilities;

10.2.7 Prepare recommendations covering the matters which are to be reviewed and acted upon by the Management Committee and any committee created by the Management Committee for the purpose of reviewing such recommendations, including, but not limited to, insurance coverages to be obtained during the periods covered by and with respect to Preconstruction Work, Construction Work and Station Work, or any phases thereof;

10.2.8 Follow the practices and procedures which have been reviewed and approved by the Management Committee or, in the absence of such approved practices and procedures, which reflect the best judgment of the Project Manager;

10.2.9 Pending action by the Management Committee on insurance recommendations, procure insurance binders providing such coverage as the Project Manager believes necessary and upon action by the Management Committee procure and maintain in force as permanent insurance all Project Insurance determined necessary by the Management Committee, furnishing, or causing to be furnished, to each Participant evidence of such insurance as required by Section 20 hereof; and

10.2.10 Keep the Participants fully and promptly advised of material changes in conditions or other material developments affecting the performance of its responsibilities.

HL&P had the duty, and impliedly warranted, to the other owners, including Austin, that it would discharge its duties as Project Manager for STP in a workmanlike manner and with the skill, care and attention customarily expected of a Project Manager on a project such as STP. Further, by reason of HL&P's agreement to assume total responsibility for planning, construction and operation of STP on behalf of the other owners, and to act for them in all respects as Project Manager, HL&P was and is a fiduciary toward Austin and the other owners, and as such has all the duties of a fiduciary and is held to perform under the standards applicable to a fiduciary under the laws of the State of Texas.

VIII.

In Section 21 of the Participation Agreement, entitled "Liability of Participants to Each Other", HL&P purported to

limit its liability to the other owners for its own tortious conduct, except for "Willful Action" as defined in the Participation Agreement. Austin says that HL&P bears full responsibility in tort for its conduct as Project Manager, toward the other owners, and that the purported limitation in Section 21 is illegal, against public policy of the State of Texas, inconsistent with HL&P's duties as a fiduciary, and void and unenforceable. Thus, HL&P is responsible for its actions in tort, as well as in contract and upon statutory causes of action, as further set out below.

IX.

In December of 1973, when Austin became a participant in STP, HL&P had already selected Brown & Root, Inc. as architect-engineer-constructor for STP, and Brown & Root had begun work on the project, without a written contract. In June of 1974, HL&P, as Project Manager, formalized the selection of Brown & Root by executing an "Engineering & Construction Contract" with Brown & Root for design and construction of STP. Defendants are here given notice to produce an original counterpart of such contract, as well as all amendments, at the time of trial, or else secondary evidence will be offered. During the approximately nine years that Brown & Root was on the job at STP, its performance was grossly inadequate as set out in greater detail in a 38-page letter dated August 2, 1984 and delivered to attorneys for Brown & Root and Halliburton Corporation and in Plaintiffs' Sixth Amended Original Petition, filed in Cause No. 81-H-0686-C, styled Houston Lighting & Power Company, et al vs. Brown & Root, Inc. et al, in the District Court of Matagorda County, Texas, 130th Judicial District, on or about October 29, 1984. Said letter and said Petition were signed by all the owners of STP, including HL&P, acting by and through its duly authorized counsel of record. A true copy of such letter and a true copy of such Petition are attached as Exhibits "D" and "E", respectively, to Austin's Second Request

for Admissions to HL&P. Brown & Root remained in the position of architect-engineer-constructor at STP until September of 1981, when HL&P finally recognized and recommended to the other owners that Brown & Root should be terminated as architect-engineer and construction manager, and did terminate Brown & Root. HL&P, Project Manager, is responsible for selection of an architect-engineer-constructor which was fundamentally incapable of performing adequately at STP, for failing to competently supervise, monitor and control the architect-engineer-constructor, and for retaining a fundamentally incapable architect-engineer-constructor for nine years after the original selection.

X.

The inadequate progress at STP, under HL&P's project management from the inception of STP until the time Brown & Root was fired, and the damages suffered by Austin as a result, are illustrated by the following:

A. Had HL&P properly selected and competently supervised, monitored and controlled an architect-engineer-constructor, STP reasonably could and should have been constructed for a cost of approximately \$3.1 billion and should have achieved commercial operation in 1984 (Unit 1) and 1986 (Unit 2). Under current estimates, however, it appears probable that the actual cost of completing STP will be at least \$5.5 billion and that completion will be delayed until at least 1987 (Unit 1) and 1989 (Unit 2). Thus, STP will require, in all probability, at least \$2.5 billion more than it reasonably should have cost, and will be completed at least 3 years later than the time when it reasonably should have been completed.

B. Had Austin been informed of HL&P's and Brown & Root's fundamental inability to perform at STP, it would never have committed to STP in November and

December of 1973. If Austin in 1973 had committed to construction of a 400 megawatt fossil fueled electric generating plant, instead of committing to a 16% interest in STP, the fossil plant would, in all probability, have come on line in 1978 at a capital cost of approximately \$392 million (including AFUDC), or approximately \$1.021 billion less than the currently projected capital costs of Austin's share in STP. Additionally, because the fossil would have come on line much earlier than the currently projected completion date for STP, Austin would have saved replacement power costs. Thus, considering both capital cost and replacement power costs, Austin has been damaged by committing to STP in 1973 instead of to a fossil plant.

C. In the spring of 1976, when the decision was made to go to the field with full construction at STP, engineering was not sufficiently advanced to support construction. A competent project manager would have known the true status of the project and would not have let the project into the field in 1976. Had the true status of the project been made known, in all probability, Austin and San Antonio and CP&L would have cancelled STP or converted it to a non-nuclear station, and they would have made plans for obtaining needed energy from other sources. If STP had been cancelled or converted in 1976, and Austin had pursued alternative available energy sources in the same year, those alternatives would have cost less than Austin's share in STP. Taking into account both capital cost and replacement power cost, Austin would have saved monies by abandoning or converting STP in 1976 and committing to other energy sources with energy capacity equivalent to its share in STP.

XI.

Deficient performance by the Project Manager, HL&P, and its failure to discharge its duties, and breach of its obligations to Austin, were and are a direct, proximate and producing cause of Austin's damages. Such deficient performance as Project Manager on the part of HL&P occurred in the following respects:

- A. Selection of Brown & Root as architect-engineer-constructor.
- B. Failure to supervise, monitor and control the architect-engineer-constructor.
- C. Retention of Brown & Root, a fundamentally incapable architect-engineer-constructor, after the original selection.
- D. Failure to provide the other participants with accurate and timely information, particularly with respect to the qualifications of Brown & Root to perform as architect-engineer-constructor, and of HL&P to perform as Project Manager, and with respect to status and progress of the job at throughout the time Brown & Root was on the job.
- E. Failure to provide proper advice and recommendations to the other participants.
- F. Failure to discharge its responsibilities with respect to procurement.
- G. Taking over control of the project from Brown & Root in 1978 and 1979, when in fact HL&P was not any more qualified to exercise control over the project than was Brown & Root.
- H. Failure to employ competent officer-level persons with nuclear experience to manage STP.
- I. Failure to heed and act upon the advice and recommendations of consultants.

XII.

HL&P failed to develop a qualified project management staff and failed to take steps to remedy deficiencies in its project management staff despite recommendations or requests from its outside consultants, among others. Among other things, HL&P failed to develop an experienced project management staff or a project management staff of adequate size for STP; HL&P utilized hiring practices which made it difficult, if not impossible, to hire an adequate number of project management personnel; HL&P failed to take steps to remedy turnover in its project management organization; HL&P failed to develop or utilize an acceptable or effective project management methodology; HL&P vested too much authority and decision-making responsibility in one person; HL&P refused request(s) or rejected recommendation(s) that that person who had been vested with too much authority and decision-making responsibility be removed from STP; and, HL&P failed to adequately and competently manage STP because its project management decisions were actually or effectively overridden by that person and HL&P's project management personnel developed an adversarial relationship with the architect, engineer, constructor and construction manager.

XIII.

HL&P failed to properly ascertain Brown & Root's progress on STP and/or withheld and concealed that lack of progress from Austin, among other of the STP participants.

XIV.

HL&P failed to coordinate procurement activities with engineering and construction activities. Among other things, HL&P failed to exercise its procurement responsibility in a proper and reasonable manner; HL&P failed to integrate the procurement effort with the engineering and construction effort(s); HL&P's procurement organization lacked experienced personnel; HL&P overrode Brown & Root's procurement recommendations; HL&P failed or otherwise refused to follow the recom-

mendation(s) of its outside consultant(s) with respect to project management and project controls and scheduling techniques, thereby further adversely impacting procurement, engineering and construction activities at STP; and, HL&P failed to give adequate direction to Brown & Root as architect, engineer, constructor and construction manager.

XV.

HL&P interfered with and did not competently monitor and project manage Brown & Root's engineering work.

XVI.

HL&P did not have adequate quality assurance and quality control personnel to provide direction to the overall quality assurance and quality control program for STP; and, HL&P's quality assurance and quality control failures led to, among other things, a virtual shutdown of STP for periods of 1979, 1980 and 1981.

XVII.

Among other things, HL&P failed to provide Brown & Root with site access in a timely fashion; and, HL&P failed to obtain the railroad right of way in a timely fashion.

XVIII.

HL&P failed to take effective action when it had become apparent in 1978 and 1979 that STP was experiencing cost increases and schedule delays due to Brown & Root's failure of performance as architect-engineer-constructor and construction manager, or otherwise. Among other things, HL&P undertook to correct these failures of performance by assuming most of Brown & Root's management functions, but lacked the capability or competence to properly perform or discharge those functions.

XIX.

HL&P failed to provide adequate funds to complete STP in accordance with the project schedule. Among other things, HL&P adversely restricted Brown & Root's spending in certain years because of HL&P's financial condition.

XX.

HL&P failed to carry out its responsibilities with respect to Westinghouse's performance as NSSS vendor at STP. Among other things, HL&P failed to ensure that Westinghouse performed its obligations.

XXI.

HL&P failed to disclose, withheld or concealed information concerning STP, project studies, and project events. HL&P misrepresented material information to Austin, (among others) concerning among other things, Brown & Root's inability to successfully complete STP; projected slippages in the project schedule; projected increases in STP's cost estimate; and various cost and schedule projections for STP.

XXII.

HL&P failed to provide for and be responsible for the design, engineering, planning and construction of STP in accordance with the Participation Agreement and failed to so provide as a competent project manager or fiduciary.

XXIII.

By reason of the failures on the part of HL&P to function competently as Project Manager at STP, as described above in Paragraphs XI-XXII, there was a failure of consideration.

XXIV.

In 1972 and 1973, HL&P impliedly and expressly represented to Austin that Brown & Root had the necessary qualifications and capabilities to act as architect-engineer-constructor at STP and that HL&P had the necessary qualifications and capabilities to act as Project Manager at STP. Further, HL&P withheld and concealed the true facts, that neither HL&P nor Brown & Root possessed the necessary qualifications and capabilities. Such representations and such concealment constitute fraud under the common law of the State of Texas and under Texas Bus. & Comm. Code art. 27.01. Austin relied on the said

implied and express representations to its detriment. If it had known the true facts, it would not have agreed to participate in STP.

XXV.

In the alternative, Austin affirmatively pleads that at the time it agreed to participate in STP in 1973, Austin and the other owners were mutually mistaken as to the material facts concerning HL&P's capabilities to perform as Project Manager and Brown & Root's capabilities to perform as architect-engineer-constructor. By reason of such mutual mistake as to material facts, the fraud of HL&P described above, and the failure of consideration on the part of HL&P, Austin says that it is entitled in fairness and in equity to a judgment reforming and/or rescinding said Amendment No. 1 to the Participation Agreement as to HL&P. Accordingly, Austin seeks judgment of the Court transferring its 16% of STP from Austin to HL&P, returning to HL&P the portion of STP it transferred to Austin by execution of Amendment No. 1, and returning to Austin all the monies it has expended attributable to said 16% interest in STP.

XXVI.

Austin makes claim against HL&P under the Texas Consumer Protection--Deceptive Trade Practices Act ("DTPA"), Texas Bus. & Comm. Code §17.41 et seq. and would show:

A. HL&P breached its implied warranties under the Participation Agreement, as amended, to perform its duties as Project Manager in a workmanlike manner and with the degree of skill, care and attention customarily required and expected of a Project Manager on a nuclear project such as STP. HL&P actually assumed most of Brown & Root's management functions and to a large extent functioned as general contractor on the project in the 1978-79 time period and it breached its implied warranties in this undertaking and during this time period, as well as otherwise.

B. HL&P also breached its express warranties to:

1) Provide for the engineering, design, contract preparation, purchasing, construction, reconstruction, repair, retirement, replacement, supervision, training, expediting, inspection, testing, start-up, protection, operation, maintenance and accounting of, or with respect to, each component;

2) Promptly supply the Participants with information on major matters and significant factors which affect construction and operating schedules;

3) Provide the Management Committee and any committee created by it with all necessary records and information pertaining to matters within its designated responsibilities;

4) Keep the Participants fully and promptly advised of material changes in conditions or other material developments affecting the performance of its responsibilities.

C. HL&P gave Austin incorrect, misleading and untimely information about the status of STP in meetings of the Management Committee, in minutes of Management Committee meetings, and otherwise, and thereby violated DTPA §17.46(b)(5) and §17.46(b)(7). Over the life of the project, Management Committee meetings have occurred approximately monthly, and HL&P has sent minutes of the meetings to Austin shortly after the various meetings.

D. HL&P's mismanagement of STP and failure to manage STP properly, including its failure to obtain and furnish material information to Austin and the other participants on a timely basis is an "unconscionable action or course of action" within the meaning of the DTPA.

Austin is a "consumer" with respect to STP and with respect to HL&P, since it is a municipal corporation and governmental entity which "seeks or acquires by purchase or lease, any goods or services." Further, Austin has been adversely affected by the DTPA violations described above and has been damaged thereby in an amount far in excess of the minimum jurisdictional limits of this Court. Austin is therefore entitled to

recover three times the amount of its actual damages attributable to such violations, plus court costs and attorney's fees reasonable in relation to the amount of work expended.

XXVII.

Houston Industries induced, incited, abetted and participated in the preceding conduct, misconduct, acts or omissions to act of HL&P.

XXVIII.

All conditions precedent to the filing of this suit have been performed or have occurred.

XXIX.

Because of the necessity of this suit, Austin has incurred, and will in the future incur reasonable attorney's fees, the total amount of which will probably exceed \$7 million, and Austin seeks recovery of its attorney's fees under the DTPA and Tex. Rev. Civ. Stat. Ann. art 2226.

WHEREFORE, PREMISES CONSIDERED, plaintiff, the City of Austin, prays that it recover judgment against defendants:

1. Awarding Austin its damages, including treble damages to the extent proper under the DTPA, and including pre-judgment interest, costs and attorney's fees, aga'nst defendants, jointly and severally; or
2. Granting Austin the equitable remedy of reformation or rescission with respect to Amendment No. 1 of the Participation Agreement, requiring defendant HL&P to return to Austin all those monies expended by Austin with respect to 16% of STP to the date of judgment, with interest, relieving Austin of all future obligations with respect to said 16% of STP, and providing for a concurrent transfer by Austin of 16% of STP to defendant HL&P; and

3. Awarding such other and further relief, general and special, legal and equitable, as the Court deems appropriate and just under the circumstances.

Respectfully submitted,

CITY OF AUSTIN

By

Paul C. Isham
City Attorney for Austin, Texas
State Bar No. 10434000
304 The Brown Building
708 Colorado Street
Austin, Texas 78701
(512) 499-2268

William W. Vernon
State Bar No. 20552000
Jeff Dykes
State Bar No. 06325500
Jeffrey S. Wolff
State Bar No. 21865900
Fulbright & Jaworski
800 MBank Building
Houston, Texas 77002
(713) 651-5151

W. Wade Porter
State Bar No. 16156700
Fulbright & Jaworski
American Bank Tower, Suite 1740
221 West Sixth Street
Austin, Texas 78701
(512) 474-5201

Thomas J. Heiden
Miller, Canfield, Paddock & Stone
1200 Campau Square Plaza Building
99 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
(616) 454-5583

Peter Waldmeir
Miller, Canfield, Paddock & Stone
2500 Comerica Building
Detroit, Michigan 48226
(313) 963-6420

ATTORNEYS FOR PLAINTIFF

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'85 DEC 23 A11:21

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

OFFICE OF SECRETARY
DOCKETED & SERVICE
DANIEL
Docket Nos. 50-498 OL
50-499 OL

CERTIFICATE OF SERVICE

I hereby certify that copies of the letter to Members of the Atomic Safety and Licensing Board from Alvin H. Gutterman dated December 20, 1985, with enclosure have been served on the following individuals and entities by deposit in the United States mail, first class, postage prepaid on this 20th day of December, 1985.

Charles Bechhoefer, Esq.
Chairman, Administrative Judge
Atomic Safety and Licensing
Board Panel
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Dr. James C. Lamb, III
Administrative Judge
313 Woodhaven Road
Chapel Hill, NC 27514

Frederick J. Shon
Administrative Judge
U.S. Nuclear Regulatory
Commission
Washington, D.C. 20555

Mrs. Peggy Buchorn
Executive Director
Citizens for Equitable
Utilities, Inc.
Route 1, Box 1684
Brazoria, TX 77422

Brian Berwick, Esq.
Assistant Attorney General
For the State of Texas
Environmental Protection
Division
P.O. Box 12548, Capitol Station
Austin, TX 78711

Kim Eastman, Co-coordinator
Barbara A. Miller
Pat Coy
Citizens Concerned About Nuclear
Power

5106 Casa Oro
San Antonio, TX 78233

Lanny Alan Sinkin
Christic Institute
1324 North Capitol Street
Washington, D.C. 20002

Ray Goldstein, Esq.
Gray, Allison & Becker
1001 Vaughn Building
807 Brazos
Austin, TX 78701-2553

Oreste Russ Pirfo, Esq.
Robert G. Perlis, Esq.
Office of the Executive Legal
Director
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Atomic Safety and Licensing
Appeal Board
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Docketing and Service Section
Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Alvin H. Guttenberg