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August 13, 1992

VIA FEDERAL EXPRESS

Anthony T. Gody, Chief  
Policy Development and Technical  
Support Branch  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852

Re: Texas Utilities Electric Company,  
Comanche Peak Steam Electric Station, Unit No. 2,  
Docket No. 50-446A

Dear Mr. Gody:

Enclosed are six copies of the letter order issued on August 11, 1992, by the Hon. John G. Hyde in the suit instituted by Cap Rock Electric Cooperative, Inc. against TU Electric in the 218th Judicial District Court of Midland County, Texas.

Very truly yours,

  
M. D. Sampfels

MDS/mkm

Enclosures

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JOHN G. HYDE  
DISTRICT JUDGE  
238TH JUDICIAL DISTRICT COURT  
208 W. Wall, Suite 400  
MIDLAND, TEXAS 79702

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August 11, 1992

Mr. James P. Boldrick  
Attorney at Law  
1801 W. Wall  
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Mr. M. D. Sampels  
Attorney at Law  
2001 Bryan Tower, Suite 3100  
Dallas, Texas 75201

Re: Cause Number B-38,879; Cap Rock Electric Cooperative, Inc. v.  
Texas Utilities Electric Company

Gentlemen:

Having reviewed the 1990 Power Service Agreement, I believe that the contract interpretation advanced by the Defendant is supported by a fair reading of the document and the prevailing law. Without resort to oral testimony, the agreement contains essential terms of quantity, delivery, rate schedule and notice. Considered in its entirety, the document provides for the sale and purchase of full-requirements until the options for partial requirements are met by Caprock Electric.

As it is conceded by both parties to be unambiguous, I conclude that the agreement is valid and may be lawfully enforced by either party to it.

Addressing next the issue of sanctions, I believe the authority given a trial judge should be utilized with caution and restraint, but, by the same token, judges are remiss in their duty to safeguard the integrity of the legal system by overlooking violations which undermine that system.

I believe that the testimony of Mr. Collier was not due to inadvertence, forgetfulness or mere mistake but was calculated to and did, in fact, mislead the trial court. Caprock was directed by the Court to furnish all documents on a success fee contract to the Court. In response to that directive, documents were furnished marked "draft", thus conforming to the testimony of Mr. Collier. In reality a signed success fee agreement had been in existence but had been rescinded for the trial of this case.

Mr. James P. Boldrick  
Mr. M. D. Sampels

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This conduct by Caprock disobeyed the court order and was contrary to the dignity of court proceedings.

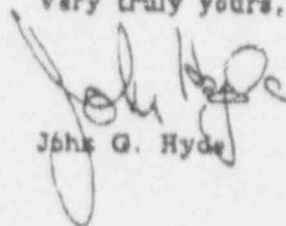
I am convinced by the article cited by Plaintiff (44 Baylor Law Review 258) that authority for sanctions must be found in Rule 215 itself and not by inherent power of a trial court. Section 2b of that rule provides in part that "If a party or an officer, director, or managing agent of a party ... fails ... to obey an order to provide or permit discovery ... the Court in which the action is pending may ... make such orders in regard to the failure as are just ..."

By furnishing misleading documents rather than the actual documents directed by the Court, the Plaintiff failed to obey the Court order. Assessing this conduct from what I consider a reasonable perspective, I believe it should be subject to sanctions. Given the context in which it happened and the impact the conduct had on the case, I find the following sanctions to be justified.

In reliance on Branden v. Dewoxy, 811 SW2d 829, I deem it appropriate to order Caprock to provide for the performance of 200 hours of community service for this infraction. The community service must be based on a list of court-approved recipients and may be performed in any county within the region for which Caprock supplies electrical power but must be verified in affidavit form filed with this Court by the recipient of the community service.

To allow ample time for appellate review of this ruling, the community service must be completed within twelve months of the date the judgment in this cause becomes final.

Very truly yours,



John G. Hyde

JGH/ch