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SUSAN N. KELLY
JONATHAN S. LIEBOWITZ
JOHN MICHAEL ADRAONA

1101 FOURTEENTH STREET, N.W.
SUITE 1400
WASHINGTON, D.C. 20005
(202) 789-1450
TELECOPIER (202) 789-4049

** RJC A. BILSEY
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DOUGLAS G. CARREY-BEAVER
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*ROYCE L. DICKENS
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*ADMITTED IN FLORIDA ONLY
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August 12, 1992

VIA TELECOPY

Anthony T. Gody, Chief
Policy Development and Technical
Support Branch
Office of Nuclear Reactor Regulation
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

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

Dear Mr. Gody:

Transmitted herewith is a copy of the August 11, 1992 letter order of the District Judge in Midland, Texas, concerning Cap Rock Electric Cooperative, Inc.'s ("Cap Rock") suit with respect to the interpretation of the 1990 Power Supply Agreement between Cap Rock and Texas Utilities Electric Company ("TUEC"). Cap Rock is currently considering whether to seek appellate review of the order and will inform the Commission once that decision has been made. I have also included Cap Rock's public statement with respect to the order.

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Mr. Anthony T. Gody
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If you have any questions, please do not hesitate to call me.

Very truly yours,



John Michael Adragna

Attorney for Cap Rock Electric
Cooperative, Inc.

cc: Mr. Thomas E. Murley (Via Federal Express)
William Lambe (Via Federal Express)
Steven E. Collier (Via Federal Express)
Merlyn Sampels, Esquire (Via Federal Express)

JOHN G. HYDE
DISTRICT JUDGE
236TH JUDICIAL DISTRICT COURT
200 W. Wall, Suite 400
MCKINNEY, TEXAS 75762

TELEPHONE 972-609-1344
FAX 972-609-1418



August 11, 1992

Mr. James P. Boldrick
Attorney at Law
1801 W. Wall
McKinney, Texas 75762

Mr. M. D. Sampels
Attorney at Law
2061 Bryan Tower, Suite 3200
Dallas, Texas 75201

Re: Cause Number B-98,878; Cap Rock Electric Cooperative, Inc. v.
Texas Utilities Electric Company

Gentlemen:

Having reviewed the 1960 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 fuel 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 *proles* in their duty to safeguard the integrity of the legal system by oversteering 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 conferring to the testimony of Mr. Collier. In reality a signed success fee agreement had been in existence but had been concealed for the trial of this case.

Mr. James P. Boldrick
Mr. M. D. Sempala

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

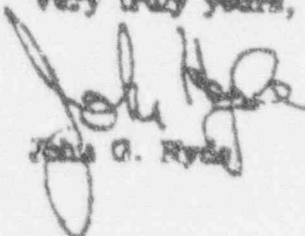
I am convinced by the article cited by Plaintiff (44 Baylor Law Review 258) that authority for sanctions must be found in Rule 215 itself and not by inherent power of a trial court. Section 7b of that rule provides in part that "If a party or an officer, director, or managing agent of a party ... fails ... 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 Bradley v. Downey, 811 SW2d 839, I deem it appropriate to order Caprock to provide for the performance of 300 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. Ryde

KTR/eh

CAP ROCK ELECTRIC

P.O. BOX 10069



8140 BURNET ROAD • AUSTIN, TEXAS 78768-1069 • 512-451-6077

August 12, 1992

JUDGE RULES CAP ROCK ELECTRIC

CANNOT BUY CHEAPER POWER

MIDLAND - A Midland District Court judge ruled Tuesday that Cap Rock Electric must continue buying wholesale power from Texas Utilities Electric Co. under a disputed 1990 agreement. The result is some 22,000 Cap Rock Electric customers in West Texas will continue paying TU Electric's higher power rates, the company announced.

Cap Rock Electric officials today vowed to continue their fight for cheaper power and would almost certainly appeal the decision.

Cap Rock Electric had sued TU Electric in December, 1991, over the interpretation of a 1990 power supply agreement between the two companies. Cap Rock contended the agreement allowed it to buy power from other utilities with the understanding that TU Electric would transmit the power to Cap Rock over its transmission lines. TU Electric had argued the contract required Cap Rock to buy all of its power from TU Electric for the next several years.

Cap Rock Electric had negotiated a power supply agreement with West Texas Utilities in Abilene at 20 percent less than TU Electric rates prior to the filing date of the lawsuit. The wholesale savings would have translated to a 10 percent decrease in Cap Rock customer electric bills, or a combined yearly savings of \$3 million.

"We're deeply disappointed in the judge's decision, mainly because it's our customers who will not receive the electric savings that we still believe are rightfully theirs," said David Pruitt, CEO of Stanton-based Cap Rock Electric.

Judge John Hyde also said Cap Rock Electric must provide 200 hours of community service for what he deemed an infraction of court rules related to a document the court had requested. The judge declined to levy any monetary or other sanctions against Cap Rock Electric that had been requested.

(more)

JUDGE RULES/PAGE 2

The community service sanction was imposed as the result of Cap Rock's delay by several hours in producing a Cap Rock Electric document by which the cooperative had agreed to pay an employee, Steve Collier, a bonus based on realized savings from negotiating alternate power contracts. Collier is director of power supply and regulatory affairs for Cap Rock Electric.

Cap Rock Electric had argued it was not obligated to produce the document at the time defendants requested it.

However, the judge said, "This conduct by Cap Rock disobeyed the court order and was contrary to the dignity of court proceedings."

"We never at any time intended to disobey or mislead the court. We are deeply disappointed that the court concluded we did so," Collier said. "We fought TU Electric over turning over the document because we didn't think it was relevant to the case, but when the court ordered it produced, we did the best we could given the time frame and what we understood we were supposed to do," he added.

Pruitt said Cap Rock Electric would have no problem providing 200 hours of community service. "It's what we do best, and doing more is a privilege not a burden," he noted.

Cap Rock Electric is a member-owned cooperative serving 17 primarily rural counties in the Midland area, has been battling giant TU Electric since 1987 over power cost and power transmission issues. TU Electric has five million customers in Texas and is headquartered in Dallas.

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FOR MORE INFORMATION contact Teresa Kelly, for Cap Rock Electric, at 1-512/328-4276