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September 22, 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. 30-446A

Dear Mr. Gody:

Enclosed are six copies of an Order issued September 21, 1992, by the Hon. John G. Hyde in the suit instituted by Cap Rock Electric Cooperative, Inc. against TU Electric in the 238th Judicial District Court of Midland County, Texas, along with a copy of the Court's transmittal letter.

Among other things, the Midland Court's Order grants TU Electric's Motion for Summary Judgment, denies Cap Rock's Motion for Summary Judgment, imposes sanctions on Cap Rock, awards TU

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JOHN G. HYDE
 DISTRICT JUDGE
 248TH JUDICIAL DISTRICT COURT
 200 W. WALL, SUITE 400
 MIDLAND, TEXAS 79702

TELEPHONE 915 488 1192
 FAX 915 488 1218

September 21, 1992

Mr. James Baldrick
 Attorney at Law
 1801 W. Wall
 Midland, Texas 79701

Mr. Charles Tighe
 Attorney at Law
 P. O. Box 2776
 Midland, Texas 79702

Re: D. 38,879 Cap Rock Electric Cooperative v. Texas Utilities Electric
 Company

Gentlemen:

Enclosed is a copy of the judgment signed this date. Under the circumstances of this case, I deem it necessary to enter one judgment and recite in it the factual findings leading to the imposition of sanctions.

I am mindful of the recent press releases of Cap Rock and, while I find them less than candid, the company management is entitled to harbor resentment towards the court that ruled against the company and to publicly express that resentment. This conduct underscores the original assessment made by the Court but ~~is not deserving of additional sanction.~~ ~~The sanctions imposed by the Court were arrived at after careful consideration of the facts addressed at trial and were imposed on the basis of the conduct of Cap Rock's Management during the trial and not what management has subsequently done.~~

Very truly yours,


 John G. Hyde

JGH/ch

COPY

IN THE 238TH JUDICIAL DISTRICT COURT OF
MIDLAND COUNTY, TEXAS

CAP ROCK ELECTRIC
COOPERATIVE, INC.,

Plaintiff,

VS.

TEXAS UTILITIES
ELECTRIC COMPANY,

Defendant.

§
§
§

NO. B-38,879

ORDER GRANTING SUMMARY JUDGMENT
AND IMPOSING SANCTIONS

On the 24th day of July, 1992, came on to be heard: (i) Texas Utilities Electric Company's Motion for Summary Judgment; (ii) Cap Rock Electric Cooperative, Inc.'s Motion for Summary Judgment; (iii) Texas Utilities Electric Company's Motion for Imposition of Sanctions against Cap Rock Electric Cooperative, Inc.; and, (iv) Cap Rock Electric Cooperative, Inc.'s Second Motion for Sanctions; and the Court, having considered the Motions for Summary Judgment and the supporting summary judgment evidence is of the opinion that Texas Utilities Electric Company's Motion for Summary Judgment has merit and, therefore, should be granted and that Cap Rock Electric Cooperative, Inc.'s Motion for Summary Judgment should be denied;

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that Texas Utilities Electric Company's Motion for Summary Judgment is GRANTED;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Power Supply Agreement dated June 8, 1990 by and between Texas Utilities Electric

Company and Cap Rock Electric Cooperative, Inc., which is the subject of this suit (the "1990 Power Supply Agreement"). (i) without reference to any parol evidence contains all of the essential terms of quantity, delivery, rate schedule, and notice; (ii) is a fully binding, valid, and enforceable contract; (iii) Cap Rock Electric Cooperative, Inc. is required to purchase all of its power and energy requirements from Texas Utilities Electric Company pursuant to the provisions of the 1990 Power Supply Agreement until such time as Cap Rock Electric Cooperative Inc. provides the requisite notice(s) to Texas Utilities Electric Company as required by the unambiguous terms of the 1990 Power Supply Agreement and otherwise complies with the terms thereof;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Cap Rock Electric Cooperative, Inc.'s Motion for Summary Judgment is DENIED.

The evidence on the motions for sanctions established the following facts:

Cap Rock Electric Cooperative, Inc. agreed to a written success fee contract with its employee, Steve Collier, and with other officers of Cap Rock Electric Cooperative, Inc. on November 26, 1992.

The success fee contract provided for financial payments to Steve Collier in the amount of 2% of the net savings difference between the cost of electrical power supplied by Texas Utilities Electric Company and the cost of electrical power provided by West Texas Utilities.

While testifying during the trial on April 14, 1992, Steve Collier, in response to questioning by opposing counsel as to the existence of such a success fee contract, did not answer in the affirmative but stated instead that he and Cap Rock Electric Cooperative, Inc. had only exchanged proposed language of a success fee agreement.

Cap Rock Electric Cooperative, Inc. management was aware of the existence of the success fee contract at the time Steve Collier testified.

Following the testimony of Steve Collier, Texas Utilities Electric Company requested the Court to direct Cap Rock Electric Cooperative, Inc. to furnish discovery of any documents relating to a success fee contract of Steve Collier.

The Court granted the request of Texas Utilities Electric Company and directed Cap Rock Electric Cooperative, Inc. to furnish to the Court copies of any such documents.

In response to the Court's order, on the afternoon of April 14, 1992 Cap Rock Electric Cooperative, Inc. furnished to the Court a photocopy of a success fee contract. The document was undated, unsigned and was marked "DRAFT".

During the evening hours of April 14, 1992, representatives of Caprock met in a hotel room in Midland, Texas.

The adjacent hotel was occupied by Steven Houle, an employee of Texas Utilities Electric Company.

The conversation among the Cap Rock Electric Cooperative Inc.'s representatives was loud enough to be heard in the hotel room occupied by Steven Houle.

Without the aid of any listening device, Steven Houle heard the conversation of the Cap Rock Electric Cooperative, Inc.'s representatives.

The Cap Rock Electric Cooperative, Inc.'s representatives discussed the existence of an unsigned success fee contract and the approach at trial that would be taken by Cap Rock Electric Cooperative, Inc.

The Cap Rock Electric Cooperative, Inc. representatives also discussed the fact that by furnishing the Court an unsigned copy of the success fee contract marked "DRAFT" rather than furnishing a copy of the actual signed agreement, Cap Rock Electric Cooperative, Inc. had not complied with the Court's order.

The following morning, Steven Houle reported to the Court the Cap Rock Electric Cooperative, Inc. conversation which he heard while in his hotel room.

When questioned by the Court, Cap Rock Electric Cooperative, Inc. acknowledged the existence of the signed success fee agreement. Cap Rock Electric Cooperative, Inc. stated to the Court that the success fee agreement with Mr. Cellier had been rescinded before the trial began. No document of rescission was furnished to the Court.

The Court concludes that by failing to timely furnish to the Court a copy of the signed success fee agreement, Cap Rock Electric Cooperative, Inc. violated the Court's order for discovery of documents, misled the Court as to the existence of a material fact and should be subject to sanctions under the provisions of Rule 215 of the Texas Rules of Civil Procedure.

The Court concludes that by listening to a conversation occurring in an adjacent hotel room while remaining within the confines of his own hotel room,

Steven Houle has not engaged in any conduct for which the Court may legally

sanction or punish him or his employer, Texas Utilities Electric Company.

The Second Motion for Sanctions filed by Cap Rock Electric Cooperative, Inc. is therefore denied.

The Motion for Imposition of Sanctions filed by Texas Utilities Electric Company is granted in the following particulars:

Cap Rock Electric Cooperative, Inc. is ordered to perform 200 hours of community service for the infractions found by the Court.

The community service may be performed in any county within the region for which Cap Rock Electric Cooperative, Inc. supplies electrical power.

The community service work must be performed by officers or directors of Cap Rock Electric Cooperative, Inc., the names of which must be approved by the Court prior to the commencement of the community service.

~~The community service work must be performed to directly benefit a non-profit community service program, charitable institution or civic organization.~~

~~The performance of community service must be verified by affidavit filed with the Court by the recipient of the service. The community service~~

~~must be completed within 12 months of the date the judgment in this cause~~

becomes final.

IT IS FURTHER ORDERED, ADVERSE AND REVERSED that the Utilities Electric Company have and recover of and from Cap Rock Electric Cooperative, Inc., (i) the sum of \$75,000.00 which the Court finds to be the reasonable attorneys fees incurred through the presentation of Defendant's Motion for Summary Judgment; (ii) the sum of \$10,000.00 which the Court finds to be the reasonable attorneys fees incurred in the presentation of Defendant's Motion for Imposition of Sanctions; (iii) the sum of \$50,000.00 as reasonable attorneys fees in the event of an appeal to the Court of Appeals, for the services necessary on behalf of the Defendant in connection with such an appeal; (iv) an additional \$25,000.00 as reasonable attorneys fees in the event there is an application for writ of error filed with the Supreme Court of Texas; and, (v) an additional \$15,000.00 reasonable attorneys fees in the event the Supreme Court of Texas grants an application for writ of error.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Texas Utilities Electric Company have and recover of any from Cap Rock Electric Cooperative, Inc., the costs of Court incurred in this cause.

SIGNED this the 5th day of September, 1992.

ORIGINAL SIGNED BY
John G. Hyde, Jr.
JUDGE PRESIDING