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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'87 SEP 17 P4:16

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF THE
DOCKETING OFFICER
BRANL

In the Matter of	§	
	§	
	§	
TEXAS UTILITIES ELECTRIC	§	Dockets No. 50-445-OL
COMPANY, <u>et al.</u>	§	50-446-OL
	§	50-445-CPA
(Comanche Peak Steam Electric	§	
Station, Units 1 and 2)	§	

MOTION FOR PERMISSION TO FILE WRITTEN RESPONSE
AND REQUEST FOR ORAL ARGUMENT

Brazos Electric Power Cooperative, Inc. ("Brazos") has received TU Electric's "Response to Brazos' 'Motion for Declaratory Order'" and the "NRC Staff Response to Brazos Electric Power Cooperative's Motion for Declaratory Order." Based upon those responses, Brazos requests that it be permitted to file a written response and to present oral argument on the matter. The reasons for these requests follow:

In its response, TU Electric denies that Ropes & Gray represents Brazos. Without signing the pleading on its own behalf, Ropes & Gray also denies that it has any attorney-client or fiduciary obligation to Brazos. Before the District Court of Dallas County, Texas, ("District Court") TU Electric has denied that it has any fiduciary obligation to Brazos. Texas Utilities Electric Company v. Tex-La Electric Cooperative of Texas, Inc., et al., No. 86-6809-A, District Court of Dallas County, Texas,

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14th Judicial District. As TU Electric and Ropes & Gray would have it, the situation is that Ropes & Gray does not represent Brazos and that Brazos cannot represent itself, assertedly because it gave up such rights through the Joint Ownership Agreement ("JOA") (which contract TU Electric maintains the Board lacks jurisdiction to construe). 1/

It is plain that as an applicant for a license, Brazos has obligations to the Nuclear Regulatory Commission, which practically can only be fulfilled through counsel. The Commission, and the public at large, have an interest in the ability of all license applicants, including "minority" owners, to be represented. However, in its response TU Electric virtually declares that Brazos would be subject to legal liability for exercising its obligations.

Given the importance of the foregoing matters and those raised by Brazos' motion and TU Electric's response, Brazos respectfully requests that it be permitted to reply and that oral argument be ordered to allow responses to any Board questions and possible Board concerns. Granting this motion will permit a clarity of positions.

1/ The JOA, however, is made expressly "subject to the applicable federal and state laws and the applicable ordinances, orders, rules and regulations of any local, state, or federal governmental authority having or asserting jurisdiction ..." § 23.08, Accord, § 23.17. The Agreement also states that Texas Utilities Generating Company acts "as agent for all Parties in the licensing ... of the Project." Recital. Accord, § 3.04.

Brazos also seeks to respond to the Staff's pleading. Brazos agrees with Staff that it is TU Electric's and not Brazos' function "to design, construct and test the CPSES plant, to comply with Commission requirements, and to present the information necessary to support a Staff finding on the adequacy of design and construction of CPSES" (Staff Response, p. 10). For this reason it has no desire to enter a general appearance in the licensing proceeding through separate counsel. However, Brazos perceives a tension between the above principle and Staff's position that Brazos does in fact have obligations as a license applicant. (Staff, pp. 11-12) Given the fact that Brazos itself believes that it has such obligations, but that it is threatened with suit if it exercises them, Brazos requests that it be permitted to respond. 2/

There is another reason why Brazos believes that argument would be useful, and further requests, pursuant to Section 2.730 of the Commission's Rules, permission to file a written response within seven days. The response of TU Electric

2/ TU Electric and Staff suggest that Brazos has not explained the relevancy of certain documents referred to in Brazos' motion as demonstrating the need for adequate representation. Brazos did not file with its motion certain correspondence to TU Electric or counsel in order to avoid revealing the contents of a document which TU Electric denies should be filed. Such differences may be inevitable and explain the need for Brazos to be able to consult directly with licensing counsel on a fiduciary basis. To the extent at p. 13, note 26, of its pleading that TU Electric implies that Brazos should have provided more explanation into the merits of why the document should have been filed, Brazos does not object to revelation of the full correspondence.

filed by Ropes & Gray "For the Owners of CPSES" accuses Brazos of seeking to delay licensing, an accusation which Brazos emphatically denies. TU Electric's argument in support of this unfounded accusation is based on a partial excerpt of a colloquy involving counsel and Judge Marshall of the District Court of Dallas County, Texas. 3/ In view of the accusation made by TU Electric and Ropes & Gray, Brazos wishes to place the entire colloquy before the Board and to state its position thereon so that there can be no future question or misunderstanding.

Finally, while Staff attempts to finesse the question of licensing counsels' representation of Brazos through a contrived reading, or disregard, of the language of Section 2.713, it appears to Brazos that the Commission has an interest in assuring that those who purport to act as attorneys for parties represent them in fact. Because of positions taken on this matter in TU Electric and Staff pleadings, Brazos believes that a response on its part is not only justified, but mandated, and that a hearing

3/ TU Electric's response admits that the discussion was not a ruling, but rather an "observation" in the midst of argument on an unrelated matter.

on the matter will permit the Board and the parties to more fully address any factual concern or concern about the relief requested, which the Board may have.

Respectfully submitted,

By: Robert A. Jablon
Robert A. Jablon
Appearing Specially on Behalf
of Brazos Electric Power
Cooperative, Inc.

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September 17, 1987

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CERTIFICATE OF SERVICE

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OFFICE OF THE CLERK
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BRANCH

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 17th day of September, 1987.

Robert A. Jablon

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