

Law Offices

Duncan, Weinberg, Miller & Pembroke, P. C.

WALLACE L. DUNCAN
EDWARD WEINBERG
JAMES D. PEMBROKE
RICHMOND F. ALLAN
ROBERT WEINBERG
JANICE L. LOWER
JEFFREY C. GENZER
THOMAS L. RUDEBUSCH
MICHAEL R. POSTAR
TANJA M. SHONKWILER
CHARLES A. BRAUN ©

OF COUNSEL
FREDERICK L. MILLER, JR.
RICHARD K. PELZ †

† ADMITTED IN WASHINGTON ONLY
© ADMITTED IN VIRGINIA ONLY

SUITE 800
1615 M STREET, N. W.
WASHINGTON, D. C. 20036

(202) 467-6370
TELECOPY (202) 467-6379

August 2, 1993

HAND DELIVERY

California Office

DUNCAN, WEINBERG, MILLER & PEMBROKE
620 McCANDLESS TOWERS
3845 FREEDOM CIRCLE
SANTA CLARA, CALIFORNIA 95054
(408) 988-4404

Northeast Regional Office

2700 BELLEVUE AVENUE
SYRACUSE, NEW YORK 13219
(315) 471-1318
THOMAS J. LYNCH
OF COUNSEL

Geoffrey E. Grant, Acting Chief
Inspection & Licensing Policy Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Re: Cajun Electric Power Cooperative, Inc.'s,
Response to Staff's July 7, 1993 Questions

Dear Mr. Grant:

On behalf of Cajun Electric Power Cooperative, Inc. ("Cajun"), and pursuant to your request for the Staff of the Nuclear Regulatory Commission ("NRC" or the "Commission"), we respond as follows to the questions contained in your letter dated July 7, 1993:

QUESTION 1. In the FERC "Order Accepting Rate Schedules, Accepting Amendment to Power Agreement, Conditionally Accepting Transmission Tariff With Modifications, Conditionally Accepting Service Agreements, Granting Waiver of Notice, and Denying Motion to Update Market Power Analysis", dated April 5, 1993, 63 F.E.R.C. Paragraph 61,025, the FERC urged the Entergy customers (and the NRC staff presumes GSU's customers as well subsequent to the merger) who are eligible for certain benefits perceived to be broader than what is termed "point-to-point" transmission service over the Entergy system, to approach the FERC with specific objections in the context of a request to amend or approve a service contract with Entergy Corporation. Would Cajun explain to the staff why this proposal would not be an acceptable option in resolving its transmission access dispute with GSU/Entergy?

NRC FILE CENTER COPY

060695
9308090177 930802
PDR ADOCK 05000458
M PDR

2998
110

RESPONSE:

The Commission Staff is apparently referencing the following language from the FERC Order cited in Question 1:

With respect to NRC license conditions, any customer that is eligible for different terms and conditions due to an NRC license condition may be separately accounted for in a service agreement. If the customer alleges that the terms and conditions contained in the service agreement do not conform to applicable requirements, the Commission will address the issue at that time based on the specific facts presented by the customer and Entergy.

63 FERC ¶ 61,025 at 61,147.

The "proposal" promulgated by the FERC is not an acceptable option to resolve Cajun's transmission access and competitive concerns regarding the transfer of control of the ownership of Gulf States Utilities Company ("GSU") to Entergy Corporation ("Entergy") for the following reasons.

First, the Service Agreement referenced by the FERC is insufficient to incorporate different terms and conditions than those contained in Entergy's Transmission Service Tariff ("TST"). Simply put, the Service Agreement, which is an adjunct to the TST, cannot overcome the limitations contained in the TST. The TST provides a point-to-point, transaction-by-transaction service. The TST would have to be completely reformulated to be useful for network transmission service.

The Service Agreement, according to Entergy, is to provide specific information about transactions, e.g., contract demand, identification of points of delivery and similar information. See TST at 23. To our knowledge, there have been only three Service Agreements filed at FERC, each of them involving transactions of Entergy Power, Inc., an Entergy generation affiliate. (No party other than Entergy has executed a Service Agreement.) The three Service Agreements filed to date are each less than two pages long. It is simply impossible that network transmission service could be provided in a Service Agreement, given the limitations contained in the TST.

The limitations in the TST filed at FERC include the very definition of the service to be provided, which is "point-to-point" service. See TST at page 11. Another example is that power and energy transmitted under the TST must be "scheduled in advance." Id. at page 31. There are a host of problems with the TST. What is required is a reformulated TST that provides for network transmission service.

Second, requiring transmission service customers, including Cajun, to wait for a future proceeding to resolve their "transmission access dispute" does not resolve the anti-competitive effects of the proposed transfer of control of ownership of GSU to Entergy. Those anticompetitive effects must be resolved in the NRC proceedings concerning the proposed transfer of control of ownership of GSU.

Third, the enforcement of the NRC license conditions is foremost a matter for the NRC, as the FERC administrative law judge found in Louisiana Power & Light Co., 46 FERC ¶ 63,024 at 65,085 (1989). Whether or not a FERC jurisdictional tariff must include terms and conditions of an NRC license condition is a matter for FERC to decide. But, the enforcement of NRC license conditions cannot be delegated by the NRC to FERC.

QUESTION 2. In terms of Cajun's access to the GSU/Entergy transmission grid, what is Cajun's understanding of the significance, if any, of the presence of a specific sentence requiring one transmission rate for a group of entities (i.e., "For each coordinating group of entities there shall be a single transmission charge.") in the Waterford 3 nuclear license (antitrust license condition 5) and the lack of a similar sentence in the River Bend and Grand Gulf nuclear licenses?

RESPONSE:

The significance of the quoted sentence in the Waterford 3 license condition is that it clarifies the meaning of "among entities." The sentence does not add a requirement not already in the Waterford 3 license condition. The term "among entities" was added by the Atomic Safety and Licensing Board because of the following observation:

The limitation of "between two entities" in Applicant's [proposed license conditions] is not an adequate provision designed to permit coordination (both operation and development) sufficient to overcome a situation inconsistent with the antitrust laws. A change from "between" to "among" will correct this deficiency.

In the Matter of Louisiana Power & Light Co. (Waterford Steam Generating Station Unit No. 3), 8 AEC 718, 733-4 (1974). The Commission also stated:

The purpose of this change [from "between" to "among"] is to prevent multiple transmission charges for transmission of a contracted transmission entitlement

among a coordinated group of two or more entities. To make the purpose of this change free from doubt, a clarifying sentence has been added.

Id. at 737.

The Atomic Safety and Licensing Board clearly found that the opportunity for transmission customers within the Entergy system to obtain network transmission service in order to coordinate their services was and is necessary in order to alleviate antitrust conditions that would otherwise exist. The TST, which the Applicants suggest will alleviate all anti-competitive concerns, simply does not fulfill the Waterford license condition, as discussed in Cajun's Motion to Intervene, etc.

Further, the River Bend license contains essentially the same requirement, i.e., service "between two or more" entities. See River Bend License Condition 10. In fact, a FERC administrative law judge has found that the River Bend license conditions were modeled on the Waterford license conditions:

That agreement [on Waterford] formed the model for resolution of the Gulf States case [i.e., River Bend] before the AEC.

Gulf States Utilities Co., 55 FPC 1803, 1809 (1976). Thus, the "lack" of the specific sentence in the River Bend license conditions is not significant, and its meaning is implicit in the River Bend (and Grand Gulf) license conditions.

QUESTION 3. Are there currently any specific power transactions underway or currently being negotiated which Cajun will have to forego if the GSU/Entergy merger is consummated and Cajun is not granted "network transmission" or parallel meaningful access to the newly created GSU/Entergy regional transmission network?

RESPONSE:

With the implementation of network transmission service, Cajun would be able to conduct power transactions utilizing such service. Without the existence of a network transmission tariff on service, Cajun is prevented from engaging even in negotiations for power transactions which require network transmission service. Absent a defined, available tariff or service, Cajun cannot know what transactions can be accomplished and thus cannot initiate meaningful negotiations with other utilities. There are power transactions which are currently being "foregone," although the specifics of such transactions

cannot be known by Cajun. The River Bend and Waterford 3 license conditions would be implemented, reflecting their purpose, if the merger is approved only with the requirement of network transmission service.

QUESTION 4. At page 74 of "Cajun Electric Power Cooperative, Inc.'s Comments, Petition For Leave To Intervene, And Request For Hearing And Conditions, On Application For Approval Of Transfer Of Ownership", Cajun makes reference to a "clash" between the Entergy open access transmission tariff which appears to allow for the collection of stranded investment costs and River Bend License Condition 1(c) which appears to prohibit stranded investment costs. In light of the FERC's ruling, what is Cajun's understanding, of the effect of the phrase "except as otherwise authorized by any regulatory authority having jurisdiction", which is also a part of River Bend License Condition 1(c), regarding the collection of stranded investment costs by GSU in any future application of the Entergy open access transmission tariff to the GSU system?

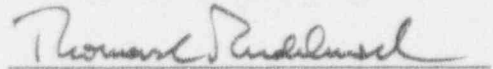
RESPONSE:

Cajun's understanding of the phrase in River Bend License Condition 1(c) is that it is part of a sentence which specifically applies only to "opportunity costs," i.e., revenue from lost sales, and not to stranded investment costs. Therefore, the "regulatory approval" phrase does not resolve the clash between the TST and the River Bend license conditions.

Geoffrey E. Grant, Acting Chief
August 2, 1993
Page 6

Please contact us if we can be of any further
assistance with regard to this matter.

Sincerely,



James D. Pembroke, Esq.
Thomas L. Rudebusch, Esq.
Duncan, Weinberg, Miller
& Pembroke, P.C.
1615 M Street, N.W.
Suite 800
Washington, DC 20036
(202) 467-6370

Attorneys for Cajun Electric
Power Cooperative, Inc.

cc: Mark J. Wetterhahn, Esq.