

17421

UNITED STATES OF AMERICA  
BEFORE THE  
NUCLEAR REGULATORY COMMISSION

DOCKETED  
USNRC

'96 JAN 17 P 4:0

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

In the Matter of )  
GULF STATES UTILITIES )  
COMPANY, et al. )  
(River Bend Station, Unit 1) )

Docket No. 50-458-OLA  
ASLBE No. 93-680

ORIGINAL DOCUMENT FILED

JAN 16 2:47

JOINT MOTION TO SUSPEND PROCEDURAL SCHEDULE

On October 16, 1995, the Atomic Safety and Licensing Board ("Board") established a Revised Prehearing Schedule which provided deadlines for Pre-hearing activities and a hearing date. Pursuant to that procedural schedule, depositions were to be completed by January 23, 1996, prehearing testimony was to be filed by February 12, 1996, and a hearing was to commence on February 27, 1996. For the reasons stated below, Ralph R. Mabey, the Chapter 11 Trustee (the "Trustee") for Cajun Electric Power Cooperative Inc. ("Cajun"), and Gulf States Utilities Company ("GSU") jointly file this Motion to Suspend the Procedural Schedule in this case -- pending action by the Bankruptcy Court to resolve this dispute at or following a hearing to be held on January 22, 1996 -- and state as follows:

On December 21, 1994, Cajun filed a petition seeking protection under Chapter 11 of the United States Bankruptcy Code. On August 1, 1995, the United States District Court for the Middle District of Louisiana (the "District Court") ordered the

Doc 3

appointment of a Chapter 11 Trustee for Cajun.<sup>1/</sup> On August 23, 1995, the District Court approved the appointment of Ralph R. Mabey as the Chapter 11 trustee. On August 30, 1995, Ralph R. Mabey qualified to serve as the Chapter 11 trustee for Cajun. Pursuant to Rule 2012(a) of the Federal Rules of Bankruptcy Procedure, the Trustee, upon his appointment, automatically was substituted for the debtor in possession as the party to all pending litigation, including this matter. Additionally, the Trustee assumed the powers and duties of Cajun's Board of Directors and management and is now the party authorized and empowered to act for and on behalf of Cajun.

On October 12, 1995, GSU and the Trustee filed a Joint Motion to Extend Hearing Date ("Joint Motion"). The Joint Motion stated:

It is necessary for the Trustee to familiarize himself with the facts and issues in this proceeding, as well as all other litigation in which Cajun is involved. It is anticipated that this will take some period of time, and the Trustee and GSU believe it would be prudent and beneficial to the parties and to the Board to extend the prehearing schedule dates and the hearing date to allow the Trustee an appropriate amount of time to familiarize himself with the issues involved in the case before proceeding further.

Joint Motion at 2. The Joint Motion was granted.

---

<sup>1/</sup> The action of the District Court in appointing a Chapter 11 Trustee was appealed to the U.S. Court of Appeals for the Fifth Circuit. In November 1995, the Court of Appeals issued an order which reversed the District Court. The mandate of the Court of Appeals has not issued, and the Trustee continues in his duties until such time as the mandate issues.

The Trustee has now reviewed the issues involved in this case before the Board, and he has concluded that it is in the best interests of the estate to withdraw its contention and seek termination of this hearing proceeding. Under Federal Rule of Bankruptcy Procedure 9019(a), the permission of the Bankruptcy Court is required to resolve disputes and terminate legal proceedings. See 11 U.S.C. Bankruptcy Rule 9019(a).

Accordingly, on January 3, 1996, the Trustee filed a Motion to Approve Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation.<sup>2/</sup>

See Trustee's Motion to Bankruptcy Court, attached as Attachment A.

Accompanying the Trustee's Motion to the Bankruptcy Court is the Declaration of the Trustee. See Attachment A at pages 14 through 17. In his Declaration, the Trustee states his belief that litigation of Cajun's safety-related contention before the Board, even if decided in Cajun's favor, will not increase the value of the estate. Id., at ¶ 8, page 16 of 19. The Trustee also states that while safety-related issues typically are the concern of the NRC staff, the NRC staff does not support Cajun's contention in this case. Id., ¶ 9. The

---

<sup>2/</sup> In light of the Trustee's Motion to the Bankruptcy Court, filed on January 3, 1996, the Trustee endeavored to file this Motion to Suspend the Procedural Schedule in a timely manner. Weather conditions in the District of Columbia during the week of January 8-12, and the federal holiday on January 15, made it impracticable to file this motion before January 16, 1996.

Trustee states his conclusion that:

I believe that the creditors of Cajun Electric's estate will be benefitted by the savings realized from terminating further participation in [this Board Proceeding] and by the dedication of the estate's limited resources, so far as practicable, to Cajun Electric's effective reorganization.

Id., ¶ 10. Therefore, it is the Trustee's judgment that terminating further participation in the Board proceeding litigating Cajun's contention is in the best interests of the estate (id., ¶ 11), and he has sought the approval of the Bankruptcy Court to terminate further participation in this case.

The Bankruptcy Court has scheduled a hearing on the Trustee's Motion for January 22, 1996. The Trustee and GSU therefore seek to suspend the procedural schedule in this case pending action by the Bankruptcy Court. Assuming the Bankruptcy Court grants the Trustee's Motion -- and the Trustee has no reason to believe the Bankruptcy Court will not grant the Motion -- the Trustee will then submit a motion to withdraw its contention and seek termination of this hearing with the Board.

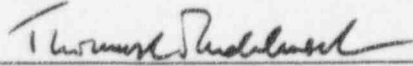
The NRC Staff concurs with the Trustee and GSU in this matter and has no objection to this Motion.

WHEREFORE, for the forgoing reasons, the Trustee and GSU request that the procedural schedule in this proceeding be suspended, pending action by the Bankruptcy Court at or following its scheduled hearing on January 22, 1996. The Trustee

will notify the Board promptly of any action by the Bankruptcy Court on the Trustee's Motion to the Bankruptcy Court.

Dated: January 16, 1996

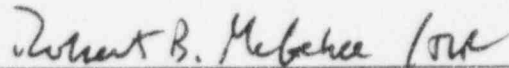
Respectfully submitted,



---

James D. Pembroke  
Thomas L. Rudebusch  
DUNCAN, WEINBERG, MILLER &  
PEMBROKE, P.C.  
1615 M Street, N.W., Suite 800  
Washington, D.C. 20036  
Telephone (202) 467-6370

Attorneys for Ralph R. Mabey,  
Chapter 11 Trustee for Cajun  
Electric Power Cooperative, Inc.



---

Robert B. McGehee, MSB #2587  
Douglas E. Levanway, MSB #1206  
Wise Carter Child & Caraway  
Professional Association  
401 East Capitol Street, Suite 600  
Post Office Box 651  
Jackson, Mississippi 39205-0651  
Telephone: (601) 968-5500

Attorneys for Gulf States Utilities  
Company

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE  
ATOMIC SAFETY AND LICENSING BOARD

DOCKETED  
USNRC

'96 JAN 17 P4:02

In the Matter of )  
)  
GULF STATES UTILITIES ) Docket No. 50-458-OLA  
COMPANY, et al. )  
)  
(River Bend Station, Unit 1) )

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

CERTIFICATE OF SERVICE

I, Thomas L. Rudebusch, hereby certify that on this 16th day of January 1996, I served on the following by hand or first class mail, postage pre-paid, copies of the JOINT MOTION TO SUSPEND PROCEDURAL SCHEDULE.

Samuel J. Chilk, Secretary  
Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike, Rm. 16 H1  
Rockville, MD 20852

Office of Commission Appellate  
Adjudication  
Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
Richard F. Cole  
Atomic Safety & Licensing Board  
Nuclear Regulatory Commission  
Washington, DC 20555

Administrative Judge  
B. Paul Cotter, Jr., Chairman  
Atomic Safety & Licensing Board  
Nuclear Regulatory Commission  
Washington, DC 20555

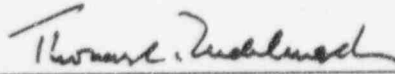
Docketing & Services Branch  
Office of the Secretary  
Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Rockville, MD 20852

Administrative Judge  
Peter S. Lam  
Atomic Safety & Licensing  
Board  
Nuclear Regulatory Commission  
Washington, DC 20555

Marian L. Zobler, Esq.  
Ann P. Hodgdon, Esq.  
Office of the General Counsel  
Nuclear Regulatory Commission  
Washington, DC 20555

Joseph B. Krotts, Esq.  
Mark J. Wetterhahn, Esq.  
Winston & Strawn  
1400 L Street, N.W.  
Washington, DC 20005

Robert B. McGehee, Esq.  
Wise Carter Child & Caraway  
6000 Heritage Building  
P.O. Box 651  
Jackson, MS 39205

  
\_\_\_\_\_  
Thomas L. Rudebusch

**ATTACHMENT A**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

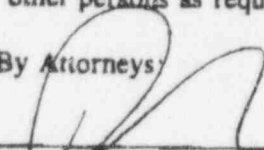
<p>In re:</p> <p>CAJUN ELECTRIC POWER COOPERATIVE, INC.,</p> <p style="text-align: right;">Debtor.</p> <p>Federal Tax Id. No.: 72-0655799</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CIVIL ACTION NO. 94-2763-B2</p> <p>BANKRUPTCY CASE NO. 94-11474</p> <p>Chapter 11</p>
---	--	--

**NOTICE OF HEARING ON MOTION BY RALPH R. MABEY, CHAPTER  
11 TRUSTEE, TO APPROVE RESOLUTION OF DISPUTE AND  
TERMINATION OF FURTHER PARTICIPATION IN NUCLEAR REGULATORY  
COMMISSION LITIGATION PURSUANT TO FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019(a)**

**YOU ARE HEREBY NOTIFIED** that Ralph R. Mabey, Chapter 11 Trustee of Cajun Electric Power Cooperative, Inc., has filed a Motion to Approve Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation Pursuant to Federal Rule of Bankruptcy Procedure 9019(a).

A hearing will be held on **January 22, 1996**, at 10:00 a.m. at the United States Bankruptcy Court for the Middle District of Louisiana, 412 North Fourth St., Third Floor, Baton Rouge, LA 70802, to consider and rule on the Motion. Any opposition to the Motion must be timely filed with the Clerk of Court and served on undersigned counsel for the Chapter 11 Trustee, all parties in interest who have requested notice and service, and any other persons as required by law.

By Attorneys



---

David S. Rubin (Louisiana Bar # 11525)  
Suite 300, City Plaza  
445 North Boulevard  
P.O. Box 2997  
Baton Rouge, Louisiana 70821-2997  
Telephone No.: (504) 383-4703


LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.  
1000 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101  
Telephone No.: (801) 320-6700

Counsel for Ralph R. Mabey, Chapter  
11 Trustee for Cajun Electric Power  
Cooperative, Inc.



**CERTIFICATE OF SERVICE**

I hereby certify that I have mailed a copy of the foregoing to all persons shown on Exhibit A attached hereto, on this 5 day of January, 1996.

  
\_\_\_\_\_

David S. Rubin

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA


In re:	)	
	)	CIVIL ACTION
CAJUN ELECTRIC POWER	)	NO. 94-2763-B2
COOPERATIVE, INC.,	)	
	)	BANKRUPTCY CASE
Debtor.	)	NO. 94-11474
	)	
Federal Tax Id. No.: 72-0655799	)	Chapter 11

**MOTION BY RALPH R. MABEY, CHAPTER 11 TRUSTEE TO APPROVE  
RESOLUTION OF DISPUTE AND TERMINATION OF FURTHER PARTICIPATION  
IN NUCLEAR REGULATORY COMMISSION LITIGATION PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(a)**

Ralph R. Mabey, the Chapter 11 trustee in the above-captioned case (the "Trustee"), by and through undersigned counsel, hereby submits this Motion by Ralph R. Mabey, Chapter 11 Trustee to Approve Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation Pursuant to Federal Rule of Bankruptcy Procedure 9019(a) (the "Motion"). The Motion is supported by the Memorandum in Support of Motion ("Memorandum") and the Declaration of Ralph R. Mabey submitted herewith. This Motion is based upon the facts set forth in Memorandum, which facts are incorporated herein by reference.

DATED this 3 day of January, 1996.

KANTROW, SPAHT, WEAVER, and BLITZER  
A Professional Law Corporation

  
\_\_\_\_\_  
David S. Rubin (Louisiana Bar #11525)  
Suite 300, City Plaza  
445 North Boulevard  
P.O. Box 2997  
Baton Rouge, Louisiana 70821-2997  
Telephone No.: (504) 383-4703

Lon A. Jenkins (Utah Bar No. 4060)  
Cindy S. Jenks (Utah Bar No. 4676)  
M. Margaret Hunt (Utah Bar No. 6060)  
LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.  
1000 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101  
Telephone No.: (801) 320-6700

Counsel for Ralph R. Mabey, Chapter 11 Trustee for  
Cajun Electric Power Cooperative, Inc.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

In re:	)	
	)	CIVIL ACTION
CAJUN ELECTRIC POWER	)	NO. 94-2763-B2
COOPERATIVE, INC.,	)	
	)	BANKRUPTCY CASE
	)	NO. 94-11474
Debtor.	)	
	)	Chapter 11
Federal Tax Id. No.: 72-0655799	)	

**MEMORANDUM IN SUPPORT OF MOTION BY RALPH R. MABEY,  
CHAPTER 11 TRUSTEE TO APPROVE RESOLUTION OF DISPUTE AND  
TERMINATION OF PARTICIPATION IN NUCLEAR REGULATORY COMMISSION  
LITIGATION PURSUANT TO FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 9019(a)**

In support of the Motion by Ralph R. Mabey, Chapter 11 Trustee, to Approve the Trustee's Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation Pursuant to Federal Rule of Bankruptcy Procedure 9019(a) (the "Motion"), Ralph R. Mabey (the "Trustee"), by and through his undersigned counsel, offers the following supporting memorandum and states as follows. The Motion also is supported by the Declaration of Ralph R. Mabey, which is attached hereto as Exhibit A.

**BACKGROUND**

1. In January, 1993, Gulf States Utilities Company ("GSU") filed two license amendment applications with the Nuclear Regulatory Commission (the "NRC"), seeking NRC approval of (i) GSU's acquisition by Entergy Corporation ("Entergy") and (ii) the transfer of operational responsibilities for the River Bend Station ("River Bend") from GSU to Entergy Operations, Inc. ("EOI").

2. Subsequently, Cajun Electric Power Cooperative, Inc. ("Cajun Electric") filed a motion to intervene in GSU's proceeding before the NRC. Thereafter, in August of 1993, the NRC convened the Atomic and Safety Licensing Board (the "ASLB") to consider the contentions raised by Cajun Electric in its motion to intervene.

3. Among other contentions, Cajun Electric claimed that GSU's proposed license amendments might result in an insufficiency of assets available for safe operations at River Bend. As bases for its contention, Cajun Electric asserted that (i) the proposed River Bend Operating Agreement runs only between Gulf States and EOI, under which agreement EOI will be solely dependent on GSU for all necessary funding (ii) EOI is very thinly capitalized and will have no source of funds other than GSU to maintain safe operations, (iii) GSU faces severe financial exposure from litigation with Cajun Electric and from certain Texas regulatory proceedings which could render GSU unable to make adequate payments to EOI to maintain safe and reliable operation of River Bend, and (iv) under the Entergy/GSU Merger Agreement, Entergy, the parent of GSU and EOI, is not responsible for funding EOI's operation of River Bend if GSU ceases to fund EOI. In the Matter of Gulf States Utilities Company, et al., (River Bend Station, Unit 1), LBP-94-3, Docket No. 50-458-OLA, 39 N.R.C. 31, 41 (1994) (hereafter In re GSU).

4. By intervening and pursuing the litigation, Cajun Electric sought to have additional conditions imposed on GSU's license amendments to preserve the rights and interests of Cajun Electric in River Bend. In re GSU, 39 N.R.C. at 31. In addition, Cajun Electric sought to have two existing license conditions enforced. Id.

5. In January 1994, the ASLB determined that Cajun Electric had standing to intervene based on Cajun Electric's property interest in River Bend, and set for hearing only one

issue raised by Cajun Electric -- that the proposed license amendments might result in a significant reduction in the margin of safety at River Bend. Id. GSU appealed the ASLB determination to the NRC and the NRC denied GSU's appeal in August of 1994. In the Matter of Gulf States Utilities Company, et al., (River Bend Station, Unit 1), Docket No. 50-458-OLA, CLI-94-10, 40 N.R.C. 43 (1994).

6. Discovery thereafter was conducted in accordance with the procedural schedule established by the ASLB, which also established a hearing in February or March of 1995. In January 1995, GSU filed a motion for summary judgment with the ASLB and Cajun Electric responded. In view of the pending summary judgment motion, GSU and Cajun Electric filed a joint motion to extend the procedural schedule. That motion was granted, but the ASLB required that a hearing on the asset related issues (the "NRC Litigation") would commence 81 days after a ruling on the summary judgment motion.

7. On June 15, 1995, the ASLB denied GSU's summary judgment motion. On July 17, 1995, Cajun Electric and GSU jointly sought a further extension of the procedural schedule. The order granting that motion established the following schedule:

Completion of depositions	October 23, 1995
Submission of prefiled testimony	November 13, 1995
Hearing commences	November 28, 1995

8. On August 2, 1995, the Court ordered the appointment of a Chapter 11 trustee for Cajun Electric and on August 23, the Court signed an order approving Mr. Mabey's appointment as Chapter 11 Trustee. On August 30, 1995, Mr. Mabey accepted his appointment and, pursuant to 11 U.S.C. § 322, qualified to serve as Cajun Electric's Chapter 11 trustee.

9. In October of 1995, Cajun Electric and GSU, at GSU's request, filed a joint motion seeking a further extension of the procedural schedule. This request was timely in view of the Trustee's recent appointment and the need for the Trustee and his staff to evaluate the NRC Litigation and determine an appropriate course of action. The ASLB granted that motion, extending until January 23, 1996 the deadline for completing depositions and until February 12, 1996 for submitting prefiled testimony, but cautioned that no further extensions of the procedural schedule would be granted absent "extraordinary circumstances."<sup>1</sup>

10. The Trustee, with the assistance of his staff and counsel, has now had an opportunity to evaluate the NRC Litigation. Declaration of Ralph R. Mabey in Support of Motion by Ralph R. Mabey, Chapter 11 Trustee to Approve Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation Pursuant to Federal Rule of Bankruptcy Procedure 9019(a) (the "Mabey Declaration"), at ¶ 7. He is advised that in view of the impending deadlines for submission of prefiled testimony and the taking of depositions, the cost to the estate of pursuing the NRC Litigation soon will increase dramatically. Mabey Declaration at ¶ 7. It also appears that the NRC Litigation, although involving important issues concerning the assets which affiliates of Entergy will be required to have available for the safe operations at River Bend, will not result in a monetary gain by the estate. Mabey Declaration at ¶ 8. Thus, the estate will be required to expend substantial amounts of time and money pursuing an action which, even if decided in Cajun Electric's favor, will not provide a monetary benefit to the estate. Mabey Declaration at ¶ 8. The Trustee submits that creditors of the estate will be benefitted by the savings realized from terminating

---

<sup>1</sup> The Trustee intends to file a request for further extension of the procedural schedule so that he need not move the litigation forward pending this Court's ruling on this Motion. The Trustee believes that these constitute "extraordinary circumstances."

further participation in the NRC Litigation and by dedicating the estate's limited resources to Cajun Electric's effective reorganization. Mabey Declaration at ¶ 9.

11. The Trustee further has been advised that, although the issues raised in the NRC Litigation typically are of considerable concern to NRC staff, the NRC staff no longer supports Cajun Electric's efforts. Mabey Declaration at ¶ 10. In view of, among other things, the NRC staff's opposition, the likelihood of Cajun Electric successfully pursuing the litigation is remote. Mabey Declaration at ¶ 10.

### DISCUSSION

I. The Court Should Approve the Trustee's Compromise Because it is Fair and Equitable and is in the Best Interest of the Estate

A trustee in a chapter 11 case is empowered to compromise and settle claims with the approval of the Court. Specifically, Federal Rule of Bankruptcy Procedure 9019(a) provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

In approving a compromise or settlement, the Court need not make a determination with any legal certainty that the claims asserted by Cajun Electric are entirely valid or worthless. Florida Trailer and Equipment Company v. Deal, 284 F.2d 567, 571 (5th Cir. 1960). A proposed compromise of a dispute should be approved without holding a full-blown trial; otherwise the Court would have to conduct the trial which the compromise seeks to avoid.

Although the United States Supreme Court held in Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968), reh'g. denied, 391 U.S. 909 (1968) (hereafter "TMT Trailer") that in making an "informed and independent judgment" regarding a proposed compromise, a court must apprise itself of "all facts necessary



for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated", it is well-established that TMT Trailer does not require a "mini-trial." United States v. Alaska National Bank (In re Walsh Construction, Inc.), 669 F.2d 1325 (9th Cir. 1982). The reason for not requiring a "mini-trial" is obvious: "Any virtue which may reside in a compromise is based on doing away with the very need for deciding with exactness what would have been the outcome had no settlement been made or approved." In re Riggi Brothers Company, 42 F.2d 174, 176 (2d Cir. 1930).

However, in approving a settlement agreement, the Court must make an independent determination that it is fair and equitable. TMT Trailer, 390 U.S. at 424. In evaluating whether a proposed settlement is fair and equitable, the Court should consider the following factors:

- (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law,
- (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
- (3) all other factors bearing on the wisdom of the compromise.

In re Jackson Brewing Co., 24 F.2d 599, 602-03 (5th Cir. 1980) (citing TMT Trailer, 390 U.S. at 424-25); see also Watts v. Williams, 154 B.R. 56 (S.D. Tex. 1993).

Consideration of these factors in the case at hand demonstrates that the Trustee has properly used his reasoned and informed judgment in deciding to terminate further participation in the NRC Litigation.

Based upon the advice of his counsel and staff, the Trustee has determined that even if Cajun Electric prevails in the NRC Litigation, no monetary benefit will be realized by the estate. The Entergy asset related issues raised by Cajun Electric, while important concerns, will not increase the value of Cajun Electric's estate. Instead, litigation of these issues before the ASLB

will require the expenditure of substantial amounts of time and estate funds which could best be employed to facilitate Cajun Electric's effective reorganization. Creditors will not be prejudiced by Cajun Electric's termination of further participation in the NRC Litigation; indeed, they will be benefitted by the savings of time and expense which will allow the Trustee to continue to focus his efforts on Cajun Electric's prompt reorganization.


Moreover, the issues raised by Cajun Electric are typically are of considerable interest to the NRC staff. In this instance, however, the NRC staff no longer supports Cajun Electric's efforts in pursuing this litigation. Thus, even those most often concerned with the type of issues raised by Cajun Electric opposes the issues raised by Cajun Electric. Given the position of the NRC staff, it appears that the likelihood of Cajun Electric succeeding in the NRC Litigation is remote. Under these circumstances, and in an effort to conserve the limited resources of the estate, the Trustee believes the best interests of the estate are served by Cajun Electric's termination of further participation in the NRC Litigation and the utilization of the estate's resources in the reorganization effort at hand.

**CONCLUSION**

Based on the foregoing, the Trustee respectfully submits that the estate's best interests are served by Cajun Electric's termination of further participation in the NRC Litigation, and therefore he requests the Court to approve that action pursuant to Fed. R. Bankr. P. 9019(a).

DATED this 3 day of January, 1996.

KANTROW, SPAHT, WEAVER, and BLITZER  
A Professional Law Corporation

  
\_\_\_\_\_  
David S. Rabin (Louisiana Bar #11525)  
Suite 300, City Plaza  
445 North Boulevard  
P.O. Box 2997  
Baton Rouge, Louisiana 70821-2997  
Telephone No.: (504) 383-4703

Lon A. Jenkins (Utah Bar No. 4060)  
Cindy S. Jenks (Utah Bar No. 4676)  
M. Margaret Hunt (Utah Bar No. 6060)  
LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.  
1000 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101  
Telephone No.: (801) 320-6700

Counsel for Ralph R. Mabey, Chapter 11 Trustee for  
Cajun Electric Power Cooperative, Inc.

**Declaration of Ralph R. Mabey, Trustee**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

In re:	)	
	)	CIVIL ACTION
CAJUN ELECTRIC POWER	)	NO. 94-2763-B2
COOPERATIVE, INC.,	)	BANKRUPTCY CASE
	)	NO. 94-11474
Debtor.	)	Chapter 11
Federal Tax Id. No.: 72-0655799	)	

DECLARATION OF RALPH R. MABEY IN SUPPORT OF MOTION BY RALPH R. MABEY, CHAPTER 11 TRUSTEE TO APPROVE RESOLUTION OF DISPUTE AND TERMINATION OF FURTHER PARTICIPATION IN NUCLEAR REGULATORY COMMISSION LITIGATION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019(a)

I, Ralph R. Mabey, declare as follows:

1. I make this Declaration based upon facts of which I have personal knowledge or which have been made known to me in the course of my duties such that I may appropriately rely upon them. I am competent to testify in the matters set forth herein.

2. I make this Declaration in support of the Motion by Ralph R. Mabey, Chapter 11 Trustee, to Approve Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation Pursuant to Federal Rule of Bankruptcy Procedure 9019(a).

3. I am the Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc. ("Cajun Electric").

4. Before my appointment as Cajun Electric's Chapter 11 Trustee, Cajun Electric had filed a motion to intervene in a certain proceeding before the Nuclear Regulatory Commission (the "NRC") involving two license amendment applications filed with

the NRC by Gulf States Utilities Company ("GSU") in January of 1993.

5. In January 1994, the Atomic Safety Licensing Board (the "ASLB") approved Cajun Electric's standing in the case and set for hearing only one issue raised by Cajun Electric in its motion to intervene -- that the proposed license amendments might result in a significant reduction in the margin of safety at River Bend. Thereafter, the ASLB set the initial procedural schedule for hearings regarding the referenced issue (the "NRC Litigation"). This initial procedural schedule was extended on subsequent occasions upon joint motions filed by Cajun Electric and GSU.

6. In October of 1995, Cajun Electric, at GSU's request, entered into another joint motion, seeking a further extension of the procedural schedule established by the ASLB. This request was timely in view of my recent appointment as Chapter 11 Trustee and the need for me and my staff to evaluate the NRC Litigation and determine an appropriate course of action. The ASLB granted that motion, extending until January 23, 1996, the deadline for completing depositions and until February 12, 1996, the deadline for submitting prefiled testimony, but cautioned that no further extensions of the procedural schedule would be granted absent "extraordinary circumstances."

7. With the assistance of my staff and counsel, I have evaluated the NRC Litigation. I have been advised that in view of the impending deadlines for submission of prefiled testimony and the taking of depositions, the cost to the estate of pursuing the NRC Litigation soon will increase dramatically.

8. I also have been advised that the NRC Litigation, although involving important issues concerning the assets which affiliates of Entergy will be required to have available for the safe operations at River Bend, will not result in a monetary gain by the estate. If the estate proceeds with the NRC Litigation, the estate will be required to expend substantial amounts of time and money pursuing an action which, even if decided in Cajun Electric's favor, will not increase the value of the estate.

9. I also have been advised that, although the Entergy asset related issues raised in the NRC Litigation typically are the kind that would be of considerable importance to the NRC staff, in this instance the NRC staff no longer supports Cajun Electric's efforts. Given, among other things, the NRC staff's position, I believe that the likelihood of Cajun Electric successfully pursuing the litigation is remote.

10. I believe that creditors of Cajun Electric's estate will be benefitted by the savings realized from terminating further participation in the NRC Litigation and by the dedication of the estate's limited resources, so far as practicable, to Cajun Electric's effective reorganization.

11. Accordingly, under the circumstances, it is my judgment that terminating further participation in the NRC Litigation is in the best interest of the estate. Such action will conserve the limited resources of the estate and permit me to focus those resources, so far as practicable, on the reorganization effort at hand.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 1 day of January, 1996.

  
\_\_\_\_\_  
Ralph R. Mabe



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA  
95 JAN -9 PM 3:52

In re:	)	CIVIL ACTION
CAJUN ELECTRIC POWER	)	NO. 94-2763-B2
COOPERATIVE, INC.,	)	BANKRUPTCY CASE
	)	NO. 94-11474
Debtor.	)	Chapter 11
Federal Tax Id. No.: 72-0655799	)	

ORDER GRANTING MOTION BY RALPH R. MABEY, CHAPTER 11 TRUSTEE, TO APPROVE RESOLUTION OF DISPUTE AND TERMINATION OF FURTHER PARTICIPATION IN NUCLEAR REGULATORY COMMISSION LITIGATION PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 (a)

Upon consideration of Motion by Ralph R. Mabey, Chapter 11 Trustee to Approve Resolution of Dispute and Termination of Further Participation in Nuclear Regulatory Commission Litigation Pursuant to Federal Rule of Bankruptcy Procedure 9019(a), and good cause having been established therefore,

IT IS HEREBY ORDERED as follows:

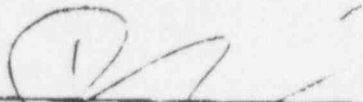
1. The Motion shall be and hereby is GRANTED.

\_\_\_\_\_, Louisiana, this \_\_\_\_ day of \_\_\_\_\_, 1996

\_\_\_\_\_  
The Honorable Gerald Schiff  
United States Bankruptcy Judge

Order Submitted By:

KANTROW, SPAHT, WEAVER, and BLITZER  
A Professional Law Corporation



---

David S. Rubin (Louisiana Bar #11525)  
Suite 300, City Plaza  
445 North Boulevard  
P.O. Box 2997  
Baton Rouge, Louisiana 70821-2997  
Telephone No.: (504) 383-4703

LeBOEUF, LAMB, GREENE & MacRAE, L.L.P.  
Lon A. Jenkins, (Utah Bar No. 4060)  
Cindy S. Jenks (Utah Bar No. 4676)  
M. Margaret Hunt (Utah Bar No. 6060)  
1000 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101

Telephone No.: (801) 320-6700

Counsel for Ralph R. Mabey, Chapter 11  
Trustee for Cajun Electric Power  
Cooperative, Inc.