

17464

DOCKETED
USNRC

UNITED STATES OF AMERICA
BEFORE THE
NUCLEAR REGULATORY COMMISSION

'96 FEB -9 P3:34

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

In the Matter of)
)
GULF STATES UTILITIES) Docket No. 50-458-0LA
COMPANY, et al.)
)
River Bend Station, Unit 1)

SUPPLEMENT TO
WITHDRAWAL OF CONTENTION AND
MOTION FOR TERMINATION OF HEARING OF
RALPH R. MABEY, CHAPTER 11 TRUSTEE FOR
CAJUN ELECTRIC POWER COOPERATIVE, INC.

Ralph R. Mabey, Chapter 11 Trustee for Cajun Electric Power Cooperative, Inc. ("Trustee"), in accordance with 10 C.F.R. § 2.730 (1995) of the Nuclear Regulatory Commission's ("NRC" or "Commission") regulations, hereby files this Supplement to the Trustee's Withdrawal of Contention and Motion for Termination of Hearing, filed on January 25, 1996, in the above-captioned proceeding, and states as follows:

On December 21, 1994, Cajun had petitioned for protection under Chapter 11 of the Bankruptcy Code. On August 1, 1995, the U.S. District Court for the Middle District of Louisiana (the "District Court") ordered the appointment of a Chapter 11 Trustee for Cajun. 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 and, by operation of bankruptcy law, automatically was substituted for the debtor in

9602130212 960209
PDR ADOCK 05000458
G PDR

D503

possession as the party to all pending litigation, including this one. See Fed. R. Bankr. P. 2012(a). Thus, the Trustee's decisions and actions are binding on Cajun, which was removed as debtor-in-possession.

The January 25 Withdrawal reflected that the District Court order appointing the Trustee as Chapter 11 Trustee was appealed, and that the Court of Appeals issued an opinion reversing the District Court. Cajun Electric Power Cooperative, Inc. v. Central Louisiana Electric Co., 3 F.d 746 (Fifth Cir. 1995). However, the mandate of the Court of Appeals did not issue, pending consideration of requests for rehearing.

After the January 25 Withdrawal pleading was filed, the Trustee and his counsel learned that the Court of Appeals on that same day issued an order reversing its earlier opinion and affirming the appointment of a trustee in Cajun's bankruptcy case. See Court of Appeals order attached. Therefore, there can be doubt as to the authority of the Trustee to bind the estate on the withdrawal of Contention 2 and the termination of this proceeding. See, e.g., Commodity Futures Trading Commission v. Weintraub, 105 S. Ct. 1986 (1985) (appointment of a bankruptcy trustee for a corporate debtor removes the corporation and its board of directors from control of the entity; only the trustee and his authorized agents may act for and bind the estate.)

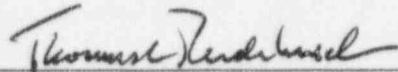
The Trustee has concluded that it is in the best interests of the estate for Cajun to withdraw Contention 2 on safety at this time and terminate the hearing proceeding on this

one contention. The Bankruptcy Court approved the Trustee's Motion to terminate this proceeding on January 23, 1996.

WHEREFORE, based on the foregoing, the Trustee states that Cajun is withdrawing its Contention 2 and respectfully submits that the Board allow this supplemental pleading and terminate the hearing proceedings without prejudice.

Dated: February 9, 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
(202) 467-6370

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

ATTACHMENT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JAN 2 5 1996

No. 95-30760

CHARLES R. FULBRUGE III
CLERK

In the Matter Of: CAJUN ELECTRIC POWER COOPERATIVE, INC.

Debtor,

CAJUN ELECTRIC POWER COOPERATIVE, INC. et al.,

Appellants,

versus

CENTRAL LOUISIANA ELECTRIC COOPERATIVE INC. et al.,

Appellees.

Appeals from the United States District Court for the
Middle District of Louisiana, Baton Rouge

ON PETITIONS FOR REHEARING AND SUGGESTIONS FOR REHEARING EN BANC

(Opinion November 20, 1995, 5th Cir., 1995, ___ F.3d ___)
Before REYNALDO G. GARZA, BARKSDALE and EMILIO M. GARZA, Circuit Judges.

ORDER OF THE COURT:

Taking the petitions suggesting rehearing en banc as petitions for rehearing, said petitions for rehearing are hereby GRANTED as follows:

"After re-reading the stipulation on file in this case, we find the conflicts of interest within the members of the Board of Cajun Electric Power Cooperative, Inc., to be such that the court

below was correct in the appointment of a trustee. We therefore withdraw all of section IV of the prior opinion found at 69 F.3d 746 and we adopt the reasoning of the dissent in its place.

The appointment of a trustee is therefore **AFFIRMED.**"

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

DOCKETED
USNRC

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

'96 FEB -9 P3:34

Docket No. 50-458-OLA
OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

CERTIFICATE OF SERVICE

I, Thomas L. Rudebusch, hereby certify that on this 9th day of February 1996, I served on the following by hand or first class mail, postage pre-paid, copies of the SUPPLEMENT TO WITHDRAWAL OF CONTENTION AND MOTION FOR TERMINATION OF HEARING OF RALPH R. MABEY, CHAPTER 11 TRUSTEE FOR CAJUN ELECTRIC POWER COOPERATIVE, INC.

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

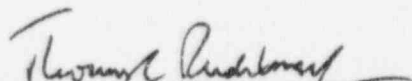
Docketing & Services Branch
Office of the Secretary
Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852

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. Knotts, 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