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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

DOCKETED
USNRC

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

'95 JAN 23 P3:56

In the Matter of)
Gulf States Utilities Co., et al.)
(River Bend, Unit 1))

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

OFFICE OF SECRETARY
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CAJUN ELECTRIC POWER COOPERATIVE, INC.'S
CONCISE STATEMENT OF MATERIAL FACTS
TO WHICH A GENUINE ISSUE EXISTS
ACCOMPANYING AND SUPPORTING ANSWER TO
GULF STATES UTILITIES COMPANY'S MOTION FOR
SUMMARY DISPOSITION

Cajun Electric Power Cooperative, Inc. ("Cajun"),
pursuant to 10 C.F.R. § 2.749(a) (1994), respectfully files this
"Concise Statement of Material Facts to Which a Genuine Issue
Exists" in opposition to Gulf States Utilities Company's ("GSU")
Motion for Summary Disposition ("GSU Motion") and "Statement of
Undisputed Facts In Support Of Its Motion For Summary Judgment"
("GSU Statement"), dated January 9, 1995. Under Section
2.749(a), a party opposing a motion for summary disposition is
required to attach a "separate, short, and concise statement of
the material facts as to which it is contended there exists a
genuine issue to be heard."

A genuine issue exists with respect to the material
facts that GSU relies upon in the GSU Statement, as follows:

1. "In every instance in which the owner of a
commercial light water nuclear power plant has
gone into bankruptcy, adequate funds were made
available through the bankruptcy court to safely
operate the facility." See GSU Statement at 1-2.

2. "Entergy Operations intends to operate River Ben within the requirements of v. Operating as long as funds are available for that purpose, and in the event such funds are not available, River Bend will be safely shut down and maintained in a safe condition." Id. at 2.
3. GSU ignores and omits numerous other material issues of fact that are the subject of genuine dispute, as discussed in the Cajun Answer, to which this document is attached. Id. at 1-2.

A genuine issue also exists with respect to the following material facts that GSU relies upon in the GSU Motion:

4. "Entergy would continue to carry out [the responsibility to safely operate River Bend] in the event of a determination adverse to Gulf States in the River Bend litigation or the bankruptcy of Gulf States." See GSU Motion at 9.
5. "If a decision were made not to continue the operation of River Bend, it would be safely shut down and maintained in a safe condition." Id. at 9.
6. "Gulf States anticipates that no specific actions would be taken other than the usual and normal operation and maintenance of the plant." Id. at 10.
7. "[I]t expected that such funds [e.g., to operate River Bend if there were an adverse determination in the River Bend litigation or if GSU were in

bankruptcy] could be available through rate relief in the appropriate jurisdictions, existing rates which would not be affected by the adverse determination or bankruptcy, and/or funds released by the bankruptcy court." Id. at 10.

8. "GSU . . . 'explain[ed] how EOI would safely operate the unit in the event of a determination adverse to GSU in the River Bend litigation or by the bankruptcy of GSU . . . ' that:

This responsibility would be carried out by Entergy Operations just as it presently carries out this responsibility with funds available from GSU There is no reason to expect that a determination adverse to GSU in the River Bend litigation or the bankruptcy of GSU would prevent GSU and Cajun from carrying out the responsibilities to provide the funds necessary to safely operate River Bend.

Id. at 10-11.

9. "[T]he only real 'evidence' on which either party can rely is the experience the NRC has had with nuclear power facilities that have gone through bankruptcy." Id. at 21.
10. "What this experience shows is that the oversight, inspection, and enforcement procedures available to the NRC are more than adequate to ensure the safe operation or safe shutdown of the facility, and that nuclear power plants which go through bankruptcy are funded through existing rates in the bankruptcy court in sufficient amounts to ensure safe operation of the plant. This

experience establishes that dire financial conditions on the part of the utility do not result in under-funded, unsafe operations or shutdowns, but rather result in stricter scrutiny by the NRC and operations funded by the bankruptcy court." Id. at 21-22.

11. "The Commission does not rely upon the financial qualifications of its power reactor licensees to assure that the operation of NRC facilities by those licensees adequately protects public health and safety." Id. at 22.
12. "GSU has sufficient financial resources to assure that the River Bend Station will be operated safely even were there adverse decisions in the pending litigation" Id. at 27.
13. " . . . GSU has taken, and will continue to take, all actions necessary to ensure that the facility has sufficient funds to operate in conformance with all conditions of its license and satisfies applicable NRC requirements." Id. at 28.
14. "Sufficient internal controls are in place to assure that the plant can be operated safely with the funds available or that the plant is placed in a safe shutdown condition." Id. at 28.
15. "Clearly, the Commission has adequate means at its disposal to ensure that any financial difficulties or problems experienced by a power reactor licensee -- including GSU -- do not affect the

safe operation of that licensee's nuclear facility." Id. at 28-29.

16. "The NRC Staff has recently affirmed that it is not aware of any instance in which actions have been taken against a licensee 'based on a Staff finding that financial matters had affected safe operation of that licensee's facility.'" Id. at 29 (citation omitted).
17. "Although, as discussed below, some plant owners have historically experienced financial difficulties, NRC has never, to date, found any nexus between such financial difficulties and the safe operation of that licensee's nuclear power plant." Id. at 29-30.
18. "Under the bankruptcy laws, adequate means exist to assure that sufficient funds are available for safe plant operation or safe shutdown." Id. GSU Motion at 30.
19. "The costs required for safe operation or safe shutdown of the River Bend facility are analogous to clean-up costs and so, as administrative expenses necessary to preserve the estate, will be granted priority over unsecured claims." Id. at 31.
20. "The NRC's treatment of the issue of financial qualifications for electric utilities is dispositive of any assurance that GSU's financial

condition, without more, constitutes a health or safety issue." Id. at 32.

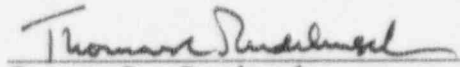
21. Reduced funding of River Bend operations will impair safe performance.
22. Reduced funding of River Bend will impair safe shutdown in the event the facility is shutdown.
23. Reduced funding of River Bend could impair funding for adequate decommissioning of River Bend.

Cajun addresses the genuine issues with respect to these material facts in its accompanying "Answer in Opposition to Gulf States Utilities Company's ("GSU") Motion for Summary Disposition", dated January 9, 1995.

These material facts, and for the other reasons stated in Cajun's Answer to GSU's Motion, compel the Board to deny GSU's Motion.

Dated: January 23, 1995

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, Thomas L. Rudebusch, hereby certify that on this 23rd day of January, 1995, I served on the following by hand or first class mail, postage pre-paid, copies of the CAJUN ELECTRIC POWER COOPERATIVE, INC.'S, CONCISE STATEMENT OF MATERIAL FACTS TO WHICH A GENUINE ISSUE EXISTS ACCOMPANYING AND SUPPORTING ANSWER TO GULF STATES UTILITIES COMPANY'S MOTION FOR SUMMARY DISPOSITION

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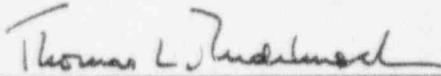
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