

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. U-17735-(COOPERATIVE RATE RESTRUCTURING)-B

CAJUN ELECTRIC POWER COOPERATIVE, INC.

EX PARTE

In re: A General Examination of the rates and charges assessed by Cajun Electric Power Cooperative, Inc. to its member distribution cooperatives. Cooperatives -- Beauregard Electric Cooperative, Inc., Claiborne Electric Cooperative, Inc., Concordia Electric Cooperative, Inc., Dixie Electric Membership Corporation, Jefferson Davis Electric Cooperative, Inc., Northeast Louisiana Power Cooperative, Inc., Point Coupee Electric Membership Corporation, South Louisiana Electric Cooperative Association, Southwest Louisiana Electric Membership Corporation, Valley Electric Membership Corporation, and Washington-St. Tammany Electric Cooperative, Inc. have petitioned the Commission to (1) Approve its decision to enter into a power purchase agreement with Louisiana Generating, LLC and (2) to authorize the Restructuring and Allocation of rates to be implemented when Louisiana Generating, LLC acquires the assets of Cajun Electric Power Cooperative, Inc.

(Decided at Open Session held July 19, 2000)

This Order addresses the disposition of the funds received by the Louisiana Public Service Commission as part of the settlement of bankruptcy of Cajun Electric Power Cooperative, Inc. ("Cajun"). As of July 19, 2000, the funds totalled \$197,469,668. The Order addresses the allocation of the settlement funds among the cooperatives¹ as well as the distribution to ratepayers.

I. CAJUN SETTLEMENT

In 1996, the Commission conducted a ratemaking review to align Cajun's rates with its then-current costs. The Commission found that Cajun, since the appointment of the

¹ All references to the cooperatives include the eleven electric distribution cooperatives operating in Louisiana as well as Central Louisiana Electric Company through its acquisition of Teche Electric Cooperative, Inc. The eleven electric distribution cooperatives include Beauregard Electric Cooperative, Inc., Claiborne Electric Cooperative, Inc., Concordia Electric Cooperative, Inc., Dixie Electric Membership Corporation, Jefferson Davis Electric Cooperative, Inc., Northeast Louisiana Power Cooperative, Inc., Point Coupee Electric Membership Corporation, South Louisiana Electric Cooperative Association, Southwest Louisiana Electric Membership Corporation, Valley Electric Membership Corporation, and Washington-St. Tammany Electric Cooperative, Inc.

bankruptcy Trustee, had not paid or accrued interest expense on its underlying debt. Order No. U-17735-H (November 11, 1996). Thus, the Commission ordered that Cajun establish an escrow fund to hold the portion of the rates associated with the interest expense. *Id.* The Commission did not eliminate the expense from rates, recognizing that the determination as to whether interest was owed rested within the jurisdiction of the bankruptcy court. The escrow fund served to protect the interest of ratepayers while the legal issues were under review by the federal courts.

In addition to the interest rate escrow issue, the Commission initiated several rate investigations during the bankruptcy, including a review of Cajun's fuel clause. The Commission also ordered three reductions in Cajun's wholesale rates.

In September, 1999, the Cajun bankruptcy case settled and the Commission approved the settlement. Order No. U-17735-M (Approving Settlement) (Corrected) (October 14, 1999). As part of the settlement, the Commission received two-thirds of the funds being held by Cajun in its Segregated Funds Account, which included the interest rate escrow account, the Order No. U-17735 Subdocket A Escrow Account, and the segregated funds under the Cash Collateral Order. The LPSC/RUS Trustee Term Sheet provided that "two-thirds (2/3) of the funds will be refunded or otherwise devoted to the benefit of ratepayers as the LPSC directs." The remaining one-third of the funds were transferred to the Rural Utilities Service ("RUS"), which was Cajun's largest creditor in the bankruptcy. The settlement was approved by the federal district court, which stated insofar as the segregated funds were concerned:

" . . . one-third (1/3) of the funds shall be transferred to the RUS and two-thirds (2/3) of the funds will be refunded or otherwise devoted to the benefit of ratepayers as the LPSC directs."

In re Cajun Electric Power Cooperative, Inc., No. 94-CV-2763 (August 26, 1999).

II. DISPOSITION OF THE SETTLEMENT FUNDS

Consistently with the terms of the settlement, the Commission has developed a plan whereby 100% of the overcharges collected as the interest portion of the rate

(approximately \$169.9 million),² will be refunded to qualifying ratepayers, with 78% (approximately \$132.1 million) of the rates collected being refunded by the cooperatives as soon as possible in the form of a refund check. An additional 11% (approximately \$18.9 million) will be refunded in the first billing cycle following the second anniversary date of this Order, with the remaining 11% (approximately \$18.9 million) being refunded in the first billing cycle following the fourth anniversary date of this Order.

The refund to ratepayers ensures that the full amount of the interest escrow collections are returned to customers and disposes of the majority of the settlement funds. Absent any additional collections, after this refund is made, the amount in escrow attributable to earnings on the fund and other consideration received in the settlement total approximately \$27.3 million. The Commission is also pursuing a claim for \$4.6 million against the Cajun estate due to certain alleged underpayments. Thus, the remaining settlement funds to be disbursed by the Commission total approximately \$27.3 million to \$31.9 million.

During the bankruptcy, through the reductions in Cajun's rate, the Commission has reduced the wholesale rate of electricity paid by cooperatives by approximately one-third. The Commission required the cooperatives to flow each of these rate decreases through to their customers. As a result of the reductions, the cooperatives' retail rates, in most cases, approximate or are below that of their investor-owned and municipal system counterparts.

The Cajun bankruptcy strained the resources of the cooperatives and forced them to defer certain needed repair and improvements to their distribution systems. In some cases, this resulted in a decline in the reliability of service provided to customers. If not addressed, additional declines may follow. The Commission recognizes the benefit to ratepayers of reliable service with as few as possible interruptions of service and with the duration of interruptions as short as possible. Ratepayers will benefit if the cooperatives upgrade their systems and are able to attract and retain qualified linemen and other field personnel. Accordingly, the Commission will direct that the funds remaining after the interest escrow refunds have been made to

² Because the funds are currently held in an interest bearing account, the precise amount of the refund will not be known until the day that the funds are disbursed. The dollar amounts stated in this Order will vary slightly from the actual disbursement.

customers (approximately \$27.3 to \$31.9 million) be utilized by the cooperatives for needed system improvements. The cooperatives will be required to submit proposed work plans to the Commission Staff, which will be subject to review and audit by the Commission Staff.

III. ORDER

On motion of Commissioner Field, with Commissioner Dixon seconding, and unanimously adopted, for the reasons set forth above, the Commission hereby **ORDERS** that the settlement funds are to be distributed as follows:

1. Sixty-seven percent (67%) of the \$197.2 million, approximately \$132.1 million, shall be refunded within thirty (30) days of the date of this Order to the cooperatives' ratepayer members and former members as a rate refund on the basis of the eligible kWh consumed by the qualifying cooperatives' members during the twelve (12) months preceding March 31, 2000, subject to a set off for delinquent balances, and to qualifying ratepayers of Central Louisiana Electric Company (CLECO); and

2. The amount obtained for interest and/or other consideration, approximately \$27.3 million, shall be delivered to the cooperatives on a pro-rata basis to be utilized solely for the direct costs of issuing refund checks and for system improvements or upgrades as described in each individual cooperative's proposed work plan, which must be submitted to the Commission Staff and is subject to verification and audit by the Commission Staff; and

3. The remaining balance of segregated funds, approximately \$37.8 million to \$42.4 million, shall be delivered to the cooperatives on a pro-rata basis to be maintained in an escrow account for their members at an institution insured by the Federal Deposit Insurance Corporation or other Commission-approved investment account. Each cooperative shall be allowed to utilize the earnings only from its pro-rata share of the escrowed funds solely for system improvements or upgrades and/or linemen's compensation as described in a proposed work plan to be submitted to the Commission Staff and subject to Commission staff verification and audit. In addition, each cooperative shall use a minimum of five percent (5%) of the annual earnings on member/customer education. The principal of said escrow funds may only be used for refunds or for set-off against future rate increases approved by the Commission. The principal of said funds

held by each cooperative shall be refunded through billing credits in two annual amounts in the first billing cycle following the end of the second (2nd) and fourth (4th) anniversary dates of this Order, if the Commission has not approved the use of the funds against a future rate offset. Notwithstanding provisions of this Order, each cooperative may elect to refund all or any portion in excess of fifty percent (50%) of the principal amounts referenced in this paragraph to ratepayers after two (2) years from the date hereof.

4. The funds shall be allocated among cooperatives based on kwh usage in the twelve months preceding March 31, 2000. The particular allocation is attached hereto as Exhibit A, although the precise amount will vary slightly due to the accrual of interest between the date of this Order and the date of the refund. The total amount of the refund to each cooperative that is to be refunded directly to retail customers shall be allocated to rate classes based on the most recently available coincident peak demand allocators used by the cooperative to assign power supply demand-related costs. A cooperative may use the customer class demand allocation factors developed by the cooperative for use in the Commission's recent unbundling proceeding, if any, or more recent data, if available. Once the refund amounts have been allocated to rate classes, these allocated amounts should then be unitized by kwh sales for the twelve months preceding March 31, 2000 for each rate class to arrive at a rate class refund per kwh. Individual customer refunds should then be computed by applying customers' usage for the twelve months preceding March 31, 2000 to the computed refund per kwh for the class.

5. The cooperatives are directed to hold all unclaimed and/or returned funds for a period of one year from the date on which the refunds are made. In the event the funds remain unclaimed on the anniversary date, the cooperatives return all unclaimed funds to current customers as a billing credit.

6. Refunds attributable to the contract between Cajun Electric and Teche Electric Cooperative, Inc. ("Teche"), which was acquired by Central Louisiana Electric Co. ("CLECO"), shall be refunded in full to ratepayers of Teche and/or CLECO as follows. For the period prior to the time Cajun's purchase power costs were first reflected in CLECO's non-fuel rates, the funds which accumulated interest shall be allocated to those Teche ratepayers who took service

from Teche during the calendar year 1997. CLECO shall propose an equitable allocation and refund methodology for allocating the refunds among former Teche customers for review and approval of the Commission. For the period after the first year in which Cajun's non-fuel power costs were included in CLECO's cost of service for refund purposes, the refunds shall be made to CLECO's current customers through billing credits. CLECO shall follow the methodology outlined in this Order for allocating the refunds among customer classes and shall credit customers based on expected usage in the billing cycle in which the refund is provided. CLECO may deduct from amount to be refunded the cost to CLECO of making the refund.

7. The refunds are to be allocated both to the cooperatives and their customers based only to the extent Cajun's kWh sales were made under tariffs that would have been affected by the elimination of interest from Cajun's rates. Cajun offered incentive rates to the cooperatives under four tariffs, EEDS, JCIC, LPI, and VLP. The Commission directs that both the allocation to the cooperatives and the refund to the cooperatives' customers reflect incentive sales under these tariffs in following manner:

(1) EEDS – The kilowatt hours associated with sales under the EEDS tariff shall not be included in determining the allocation of the settlement funds to the cooperatives. Likewise, customers taking service under the EEDS rate are not eligible to participate in the refunds by the cooperatives. These customers have been excluded because they received deep discounts (10 to 13 mills) in their rates during the bankruptcy and did not contribute to the escrow fund.

(2) JCIC and LPI – Five-eighths (5/8) of the kilowatt hours associated with sales under the JCIC and LPI tariffs shall be included in determining the allocation of the settlement funds to the cooperatives. Similarly, in determining the refund per customer, these customers shall receive credit only for five-eighths (5/8) of the kilowatt hours purchased during the refund period (the twelve months ending March 31, 2000). Further, only five-eighths (5/8) of the otherwise applicable coincident peak demand for these classes of customers (JCIC and LPI) shall be used to determine the customer class demand allocation. This determination is based on

the discount of approximately four mills in the energy clause that these customers received during the bankruptcy.

(3) VLP – The kilowatt hours associated with sales under the VLP tariff shall not be included in determining the allocation of the settlement funds to the cooperatives. Likewise, customers taking service under the VLP rate are not eligible to participate in the refunds by the cooperatives. The VLP rate was utilized only by one cooperative (Beauregard) and only for one customer. The particular rate offered was the 5-minute notice interruptible rate, which carried a substantially reduced demand charge (\$2.50), producing a deeply discounted rate.

8. This Order is effective immediately.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
July 28, 2000**

/S/ IRMA MUSE DIXON
IRMA MUSE DIXON, CHAIRMAN
DISTRICT III

/S/ JAMES M. FIELD
JAMES M. FIELD, VICE-CHAIRMAN
DISTRICT II

/S/ JACK "JAY" A. BLOSSMAN, JR.
JACK "JAY" A. BLOSSMAN, JR., COMMISSIONER
DISTRICT I

/S/ C. DALE SITTIG
C. DALE SITTIG, COMMISSIONER
DISTRICT IV

/S/ DON OWEN
DON OWEN, COMMISSIONER
DISTRICT V

SECRETARY
LAWRENCE C. ST. BLANC