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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
SHREVEPORT DIVISION**

**ENERGY LOUISIANA, INC.,  
ENERGY GULF STATES, INC., AND  
CLECO POWER LLC**

**CIVIL ACTION NO. CV05-1174**

**JUDGE HICKS**

**VERSUS**

**MAGISTRATE HORNSBY**

**SABINE RIVER AUTHORITY, STATE  
OF LOUISIANA; KENNETH  
FREEMAN; RONALD STEED;  
DANIEL CUPIT; NORMAN  
ARBUCKLE; JOHN DEBARGE;  
CARLTON GIBSON; LARRY KELLY;  
DONALD LEMIEUX; THERMAN  
NASH; ESTELLA SCOTT; BOB  
THRASHER; KERMIE VALENTINE,  
AND STANLEY VIDRINE**

**CONSENT DECREE**

**I. BACKGROUND**

A. Entergy Louisiana, Inc. (“ELI”), Entergy Gulf States, Inc. (“EGS”), and CLECO Power LLC (“CLECO”) filed a Complaint for Declaratory and Injunctive Relief (“the Complaint”) against the Sabine River Authority, State of Louisiana (“SRAL”) and the thirteen members of its Board of Commissioners in their official capacities. The Complaint seeks (a) a declaration that federal preemption and other constitutional infirmities render La. R.S. 38:2325(A)(11)(b) void, and (b) the issuance of a preliminary and thereafter permanent injunction enjoining the defendants from enforcing or complying with La. R.S. 38:2325(A)(11)(b) and requiring the defendants to fully comply with the terms and conditions of certain Federal Energy Regulatory Commission (“FERC”) orders, as more fully described below. Contemporaneously with filing the Complaint, ELI, EGS, and CLECO filed their Application for Preliminary Injunction with Incorporated Memorandum of Law (“the Application”).

B. The Sabine River Authority of Texas (“SRAT”) subsequently sought and was granted leave of Court to file its Complaint in Intervention seeking a declaration regarding whether La. R.S. 38:2325(A)(11)(b) is preempted by federal law and whether the defendants are precluded from enforcing or complying with it.

C. SRAL and the thirteen members of its Board of Commissioners filed an answer and affirmative defenses. By entering into this Consent Decree, SRAL does not concede, for any purpose other than this specific litigation and this specific Consent Decree, that it has waived any 11<sup>th</sup> Amendment (United States Constitution) Immunity; SRAL specifically reserves all rights to assert 11<sup>th</sup> Amendment Immunity in any and all future litigation (other than any action in this Court under this specific Consent Decree). Plaintiffs contend that SRAL is not protected by 11th Amendment Immunity.

D. The statute at issue, La. R.S. 38:2325(A)(11)(b), purports to prohibit SRAL from utilizing or selling the use of the waters of the Toledo Bend Reservoir for the generation or production of hydroelectric power if the mean sea level (msl) of the Toledo Bend Reservoir is below 168 feet.

E. ELI and EGS are lessees and operators of a hydroelectric facility at the Toledo Bend Reservoir. CLECO is a long term purchaser of hydroelectric power from the facility.

F. The FERC License and the Power Sales Agreement (as defined below) govern the operation of said facility. The FERC License states: “The reservoir includes a surface area of about 181,600 acres at (elevation 172.0 feet, U.S.G.S. datum), the top of the power pool. The maximum drawdown is to elevation 162.2 feet.” The Power Sales Agreement provides similarly.

G. Plaintiffs ELI, EGS, and CLECO, intervenor SRAT, and SRAL have entered into this Consent Decree to resolve this litigation.

H. The Parties agree and this Court, by entering this Consent Decree finds, that this

Consent Decree has been negotiated by the Parties in good faith, that amicable resolution of this litigation will avoid prolonged litigation between the Parties, and that this Consent Decree is fair, adequate, reasonable, and appropriate.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

The Parties agree and this Court finds that it has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, as this action arises under the Constitution and laws of the United States.

## **III. PARTIES BOUND**

This Consent Decree is binding upon SRAL and any successor agencies or instrumentalities; plaintiffs ELI, EGS, and CLECO and their respective successors or assigns; and intervenor SRAT and any successor agencies or instrumentalities.

## **IV. DEFINITIONS**

Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

- A. "ELI" shall mean Entergy Louisiana, Inc.
- B. "EGS" shall mean Entergy Gulf States, Inc.
- C. "CLECO" shall mean CLECO Power, LLC.
- D. "Plaintiffs" shall mean ELI, EGS, and CLECO.
- E. "SRAT" shall mean the Sabine River Authority of Texas.
- F. "SRAL" shall mean the Sabine River Authority, State of Louisiana.
- G. "FERC" shall mean the Federal Energy Regulatory Commission.
- H. "FERC License" shall mean, collectively, (i) the FERC Order entitled "Order Issuing Licenses (Major)," issued on October 14, 1963 and filed into the record in this litigation

as Exhibit A to the Application; (ii) the FERC Order entitled “Order Approving Recreational Use Plan and Modifying Order,” issued on April 21, 1967 and filed into the record of this litigation as Exhibit B to the Application; and (iii) the FERC Order entitled “Order Approving Reservoir Clearing Plan and Modifying License,” issued February 26, 1968 and filed into the record in this litigation as Exhibit C to the Application.

I. “Power Sales Agreement” shall mean the existing Power Sales Agreement entered into on February 1, 1964 between SRAL and SRAT on the one hand and Louisiana Power & Light Company (former name of ELI), Gulf States Utility Company (former name of EGS), and Central Louisiana Electric Company, Inc. (predecessor to CLECO) on the other hand, as well as any supplemental agreements or amendments thereto, wherein Louisiana Power & Light Company, Gulf States Utility Company, and Central Louisiana Electric Company, Inc. would lease and operate the Toledo Bend Project facilities, oversee the generation of power, and then purchase the entire output of generated power, all in accordance with the FERC License and any amendments thereto. The February 1, 1964 agreement referenced above was filed into the record in this litigation as Exhibit D to the Application.

J. “Parties” shall mean SRAL, ELI, EGS, CLECO, and SRAT.

**V. AGREEMENT NOT TO ENFORCE**

A. SRAL agrees and covenants not to enforce or attempt to enforce the provisions of La. R.S. 38:2325(A)(11)(b), as amended by Acts 2003 No. 295, Section 1, against ELI, EGS, and CLECO, and their respective successors and assigns while the Power Sales Agreement is in effect.

B. In consideration of the foregoing agreements and covenants:

1. ELI, EGS, CLECO and SRAT agree and covenant not to further prosecute this litigation provided that this Consent Decree is entered by the Court; and,

2. ELI, EGS, CLECO, and SRAT agree that the members of SRAL's Board of Commissioners, (defendants Kenneth Freeman, Ronald Steed, Daniel Cupit, Norman Arbuckle, John Debarge, Carlton Gibson, Larry Kelly, Donald Lemieux, Therman Nash, Estella Scott, Bob Thrasher, Kermie Valentine, and Stanley Vidrine) shall be dismissed from this suit with prejudice.

#### **VI. DISMISSAL**

The plaintiffs, ELI, EGS, CLECO, as well as SRAT, now dismiss with prejudice defendants Kenneth Freeman, Ronald Steed, Daniel Cupit, Norman Arbuckle, John Debarge, Carlton Gibson, Larry Kelly, Donald Lemieux, Therman Nash, Estella Scott, Bob Thrasher, Kermie Valentine, and Stanley Vidrine. It is expressly provided, however, that SRAL itself is not dismissed.

#### **VII. ADDITIONAL FINDINGS**

The Court, upon considering the Parties' Joint Motion to Adopt the Consent Decree, finds and the Parties agree that:

- A. There is a reasonable factual and legal basis for the claims asserted by Plaintiffs.
- B. La. R.S. 38:2325(A)(11)(b) directs SRAL to treat the minimum reservoir level (below which it "shall not utilize or sell the use of waters of the Toledo Bend Reservoir for the generation or production of hydroelectric power") as 168 feet msl, subject to certain exceptions as set forth in that statute. There is a substantial evidentiary and legal basis for Plaintiffs' claim that the application of the subject statute to the Power Sales Agreement is unconstitutional and Plaintiffs have established a *prima facie* case supporting this claim.
- C. The criteria for granting injunctive relief are satisfied.
- D. The Settlement Agreement embodied in this Consent Decree is fair, adequate, reasonable, and appropriate.

**VIII. SIGNATORIES**

Each undersigned representative certifies and warrants that he or she is authorized to enter into the terms and conditions of this Consent Decree and to bind his or her respective Party. Each of the Plaintiffs further warrants and represents that its counsel is authorized to sign this Consent Decree and bind each Plaintiff to the terms and conditions of this Consent Decree. SRAL's authority to enter into this Consent Decree is further evidenced by the signature of its duly authorized Chairman.

**IX. RETENTION OF JURISDICTION**

This Court retains jurisdiction over this matter to interpret and enforce the terms of this Consent Decree and the settlement embodied herein.

**X. EFFECTIVE DATE**

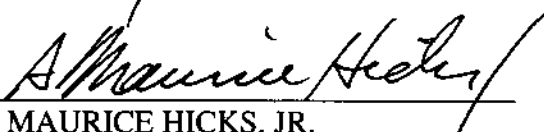
The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

**XI. FINAL JUDGMENT**

A. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied herein. The Parties acknowledge that there are no representations, agreements, or understandings relating to this Consent Decree other than those expressly contained herein.

B. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

So ordered this 4<sup>th</sup> day of January, 2006.

  
S. MAURICE HICKS, JR.  
UNITED STATES DISTRICT COURT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Entergy Louisiana, Inc., et al. v. Sabine River Authority, State of Louisiana, et al., Civil Action No. CV05-1174.

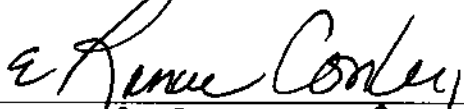
The Sabine River Authority, State of Louisiana

By: Ronald E. Steed  
Name: Ronald Steed  
Title: Chairman

Dated: 12/16/05

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Entergy Louisiana, Inc., et al. v. Sabine River Authority, State of Louisiana, et al., Civil Action No. CV05-1174.

Entergy Louisiana, Inc.

By:   
Name: E. RENAE COWLEY  
Title: President & CEO, Entergy LA  
Dated: Dec. 27, 2005

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Entergy Louisiana, Inc., et al. v. Sabine River Authority, State of Louisiana, et al., Civil Action No. CV05-1174.

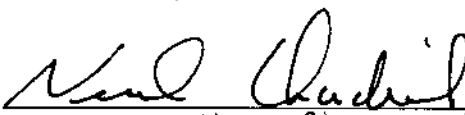
Entergy Gulf States, Inc.

By:   
Name: Joseph F. Domino  
Title: President/CEO

Dated: 12/20/05

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Entergy Louisiana, Inc., et al. v. Sabine River Authority, State of Louisiana, et al., Civil Action No. CV05-1174.

CLECO POWER, LLC

By:   
Name: R. O'Neal Chadwick, Jr.  
Title: Senior Vice President -  
General Counsel  
Dated: Dec. 27, 2005

**PHELPS DUNBAR LLP**

BY: \_\_\_\_\_

  
Steven J. Levine, Bar No. 14139 (T.A.)

J. Alan Harrell, Bar No. 25081

Annette N. Peltier, Bar No. 24410

Suite 701 • City Plaza

445 North Boulevard

Baton Rouge, Louisiana 70802

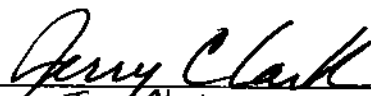
Telephone: (225) 346-0285

Telecopier: (225) 381-9197

ATTORNEYS FOR PLAINTIFFS ENTERGY  
LOUISIANA, INC., ENTERGY GULF STATES,  
INC., AND CLECO POWER LLC

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Entergy Louisiana, Inc., et al. v. Sabine River Authority, State of Louisiana, et al., Civil Action No. CV05-1174.

The Sabine River Authority of Texas

By:   
Name: Jerry Clark  
Title: Executive Vice President and General Manager

Dated: 1/4/06

RESOLUTION NO. 590

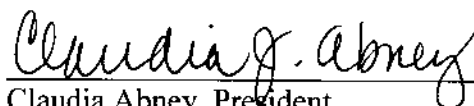
05-1174 ENERGY v  
SABINE RIVER  
Authority

RESOLUTION OF THE SABINE RIVER AUTHORITY OF TEXAS IN SUPPORT OF THE CONSENT DECREE CONCERNING LA. R.S. 38:2325(A) PERTAINING TO THE POWER GENERATION AT TOLEDO BEND RESERVOIR WHEN THE LAKE LEVEL IS BELOW 168 FT. MSL.

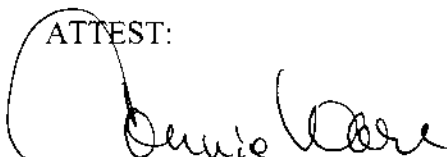
BE IT RESOLVED that relative to LA. R.S. 38:2325(A) pertaining to the power generation at Toledo Bend Reservoir when the lake level is below 168 ft. msl, the Sabine River Authority of Texas Board of Directors supports the Consent Decree negotiated by the Parties involved and attached to this resolution;

BE IT RESOLVED that the Board of Directors through this resolution authorizes the General Manager to date, sign, deliver and otherwise execute any necessary documents required in the resolution of this matter, in substantially the form and substance attached to this Resolution and made a part hereof for all purposes.

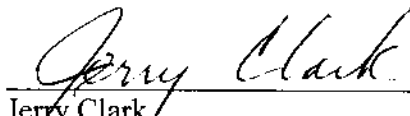
THIS RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF THE SABINE RIVER AUTHORITY OF TEXAS AT THE ANNUAL BOARD OF DIRECTORS MEETING ON THE 8<sup>TH</sup> DAY OF DECEMBER 2005.

  
\_\_\_\_\_  
Claudia Abney, President  
Board of Directors

ATTEST:

  
\_\_\_\_\_  
Connie Ware, Secretary-Treasurer

APPROVED:

  
\_\_\_\_\_  
Jerry Clark  
Executive Vice President  
And General Manager

05-1174 ENTERGY  
V. SABINE RIVER  
AUTHORITY

RESOLUTION

THE SABINE RIVER AUTHORITY, STATE OF LOUISIANA, BOARD OF COMMISSIONERS, AT THEIR REGULAR MEETING HELD DECEMBER 15, 2005, DID PASS THE FOLLOWING RESOLUTION:

WHEREAS, *The Sabine River Authority, State of Louisiana*, and the individual Commissioners of the Sabine River Authority, State of Louisiana in their official capacity, have been named a defendant in an action entitled *Entergy Louisiana, Inc., Entergy Gulf States, Inc. And Cleco Power LLC Versus Sabine River Authority, State of Louisiana; Kenneth Freeman; Ronald Steed, Daniel Cupit; Norman Arbuckle; John DeBarge; Carlton Gibson; Larry Kelly; Donald Lemieux; Therman Nash; Estella Scott; Bob Thrasher; Kermie Valentine; And Stanley Vidrine*, Docket Number CV05-1174 of the United States Court for the Western District of Louisiana, Shreveport Division ("the lawsuit") and,

WHEREAS, *The Sabine River Authority, State of Louisiana* has consulted with not only the Louisiana Attorney General's Office about this matter, but also has retained special counsel to advise and represent the Board and its members; and,

WHEREAS, *The Sabine River Authority, State of Louisiana* believes that an amicable settlement of this matter is preferable and justified as opposed to extended and costly litigation; and,

WHEREAS, the proposed settlement mandates that the individual *Commissioners of the Sabine River Authority, State of Louisiana* be dismissed from the lawsuit;

THEREFORE BE IT RESOLVED:

- a. that *Ronald Steed, as Chair of The Sabine River Authority, State of Louisiana* is now authorized, on behalf of and in the name of *The Sabine River Authority, State of Louisiana*, to enter into and bind *The Sabine River Authority, State of Louisiana* to the terms and conditions of a Consent Decree to settle the Litigation;
- b. that the terms and conditions of the *Consent Decree* be as set forth in the document attached as Exhibit "A" to this *Resolution*, and that
- c. to the extent that any further wording changes in the *Consent Decree* are necessary, *Ronald Steed* is now authorized to agree on behalf of *The Sabine River Authority, State of Louisiana* to any and all such wording changes, but only as long as such changes:
  - i. do not alter any of the substantive portions of the Consent Decree;
  - ii. do not result in any Commissioner remaining a party to the Litigation; and
  - iii. do not result in any statements to which The Sabine River Authority, State of Louisiana is bound concerning the constitutionality of LA R.S. 38:2325(A)(11)(b) beyond that contained in Exhibit "A".

Motion for adoption of this resolution made by Mr. Nash seconded by Mr. Arbuckle  
YEAS: 8 NAYS: 3 ABSENT: 1

THEREFORE, the above resolution is hereby adopted by the Board of Commissioners, Sabine River Authority, State of Louisiana, this 15<sup>th</sup> day of December, 2005 and shall become a part of the official public records of *The Sabine River Authority, State of Louisiana*.

Ronald E. Steed  
RONALD STEED, CHAIRMAN

Norman Arbuckle  
NORMAN ARBUCKLE, VICE-CHAIRMAN

ATTEST:

Stanley Vidrine  
STANLEY VIDRINE, SECRETARY