

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-60404

CONCORDIA ELECTRIC COOPERATIVE, INC.,

Petitioner-Cross-
Respondent,

versus

NATIONAL LABOR RELATIONS BOARD,

Respondent-Cross-
Petitioner.

Petition for Review and Cross-Application for Enforcement
of an Order of the National Labor Relations Board
(15-CA-13053-2)

June 26, 1996

Before HIGGINBOTHAM, WIENER, and PARKER, Circuit Judges.

PER CURIAM:*

We are not persuaded that Concordia Electric Cooperative, Inc. is exempt from the National Labor Relations Act as a "political subdivision" of the State of Louisiana. 29 U.S.C. § 152(2); NLRB v. Natural Gas Utility Dist. of Hawkins County, Tenn., 402 U.S. 600 (1971). We have previously rejected the claim advanced by

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

Concordia that a public utility whose directors are elected by its members is responsible to the general electorate. See NLRB v. Natchez Trace Elec. Power Ass'n, 476 F.2d 1042, 1045 (5th Cir. 1973); see also Fayette Electrical Cooperative, Inc., 316 N.L.R.B. 1118 (1995).

In addition, the other Hawkins factors point against Concordia's claimed exemption. Among other things, Concordia, like privately owned utility companies, is subject to regulation by Louisiana's Public Service Commission. See Cajun Elec. Power Cooperative, Inc. v. Louisiana Public Service Comm'n, 544 So.2d 362, 365 (La.), cert. denied, 493 U.S. 991 (1989). It is exempt from Louisiana's Open Meetings law, which applies to public bodies, Hunerjager v. Dixie Elec. Membership Corp., 434 So.2d 590, 591-92 (La. Ct. App.), cert. denied, 440 So.2d 149 (La. 1983), and its power of eminent domain is coextensive with that possessed by privately owned electrical utilities. See La. Rev. Stat. Ann. § 12:403(12). In short, these factors indicate that Louisiana treats electrical cooperatives like investor-owned public utilities, not as a political subdivision of the state.

ENFORCEMENT GRANTED.