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PUC BULLETIN

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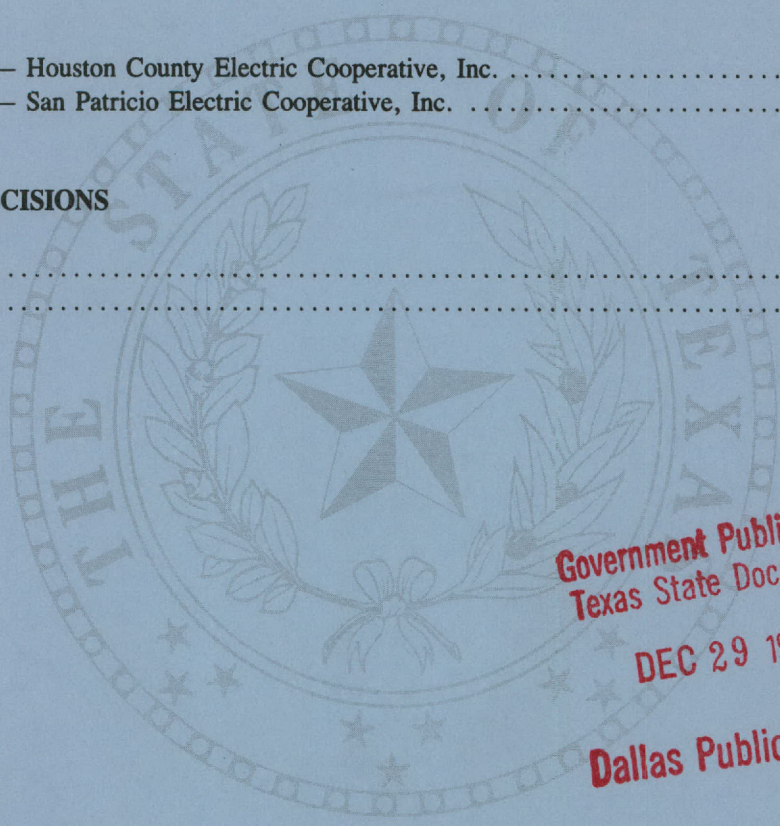
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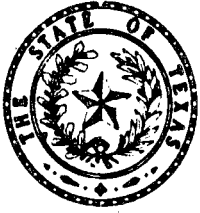
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Marta Greytok
Chairman

Jo Campbell
Commissioner

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- Application of electric utility for a certificate of convenience and necessity for proposed generating station/unit (coal fired)
- Rate filing package, Class A & B
- Rate filing package, Class C & D (electric & telephone)

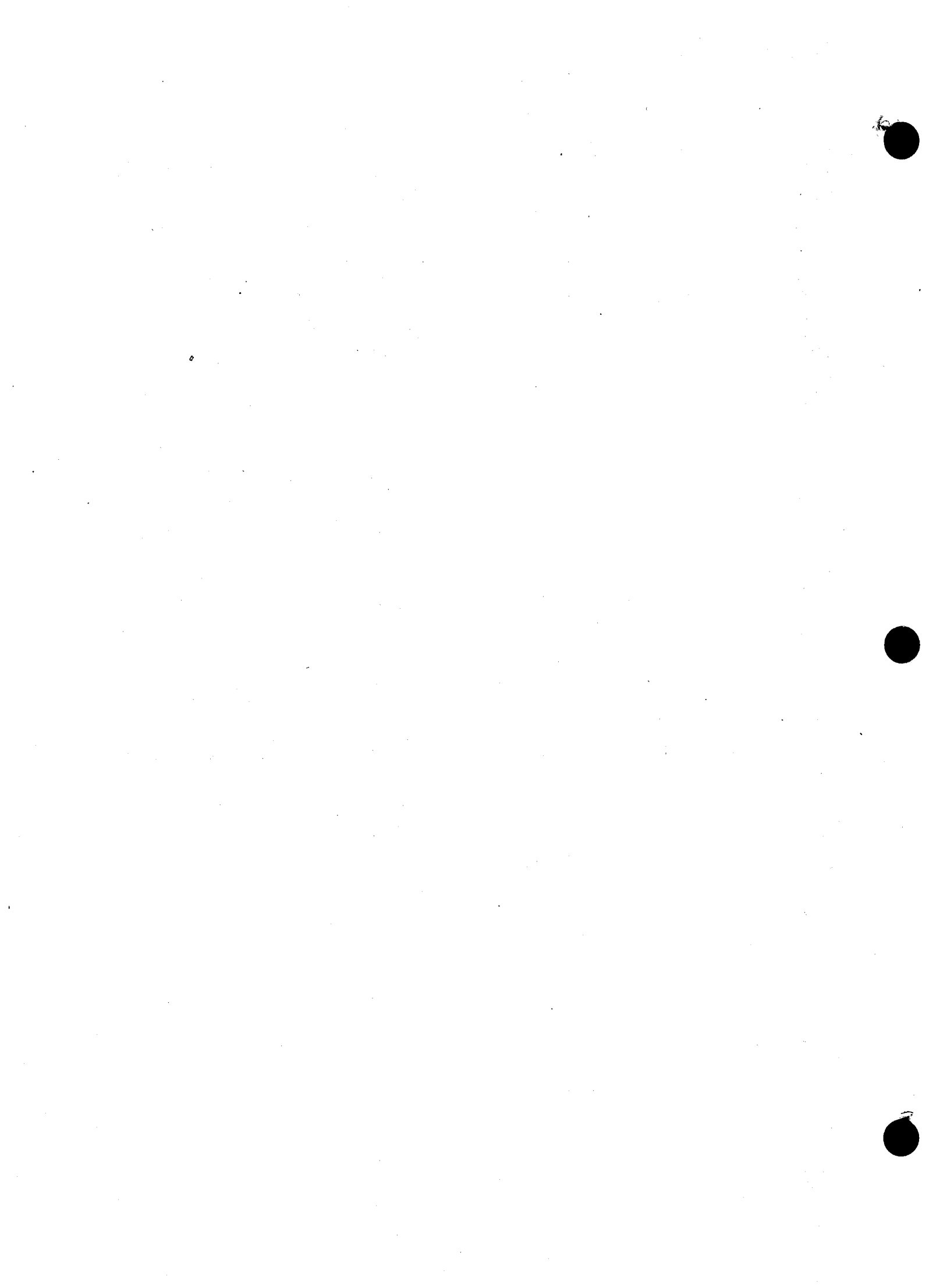
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**INQUIRY INTO THE MEET-POINT
BILLING PRACTICES OF GTE
SOUTHWEST, INC.**

§
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§

DOCKET NO. 8730

November 1, 1989

In docket arising from final order in Docket No. 5610, Commission approved new rate structure for GTE Southwest's switched transport, pursuant to a stipulation signed by all parties. The Commission severed and took no action on the portion of the docket related to refunds.

- [1] **RATEMAKING--RATE DESIGN--TELEPHONE--MISCELLANEOUS CHARGES**
Premium and nonpremium switched transport rates were derived, utilizing 1987 data, which would allow recovery of the revenue requirement for switched access approved in Docket No. 5610. (pp. 753, 789)
- [2] **RATEMAKING--RATE DESIGN--REFUNDS, CREDITS AND SURCHARGES**
No action was taken on the refund of illegally charged rates for meet point billing. The refund issue was severed and held for later consideration. (p. 789)



Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N

Austin, Texas 78757 · 512/458-0100

Marta Greytok
Chairman

Jo Campbell
Commissioner

October 13, 1989

TO ALL PARTIES OF RECORD

Re: Docket No. 8730--Inquiry Into the Meet-Point Billing Practices of GTE Southwest, Inc.

Dear Sir or Madam:

Enclosed is a copy of my Examiner's Report and proposed Final Order in the above-referenced docket. The Commission will consider this case in an open meeting scheduled to begin at 9:00 a.m. on November 1, 1989, at the Commission offices at 7800 Shoal Creek Boulevard, Austin, Texas. Exceptions, if any, to the Examiner's Report must be filed in writing by noon on Friday, October 20, 1989. Replies, if any, to the exceptions must be filed in writing by noon on Thursday, October 26, 1989.

Pursuant to Commission Procedural Rule 21.143, requests for oral argument must be made in writing, filed with the Commission, and served on all parties by 5:00 p.m. the fourth scheduled working day preceding the final order meeting date, or October 26, 1989. If a request for oral argument is made, parties may call Ms. Lisa Serrano at (512) 458-0266 after 9:00 a.m. the day before the final order meeting to learn if oral argument will be allowed by the Commissioners. If oral argument is allowed at the final order meeting, the Commissioners may delay the decision until the following day. If the request for oral argument is not granted, the Commissioners may still have questions they want to address to the parties. Your presence at the final order meeting is not required, but you are welcome to attend if you wish. A copy of the signed order will be mailed to you shortly after the final order meeting.

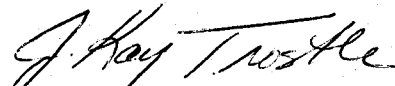
Summary of Examiner's Report

There is no statutory deadline in this docket.

This docket arose as a result of the Commission's action in Docket No. 5610 in which a contested docketed proceeding was ordered to be undertaken to determine an appropriate structure for the company's switched transport rates and the amount that GTE Southwest would refund to its interexchange carrier customers. All parties to the docket signed a stipulation concerning the rate structure for premium and nonpremium switched transport access. The intervening IXC's, AT&T, MCI and ClayDesta, reached individual private settlements concerning refunds to be made to them by GTE Southwest. General Counsel and the company then entered into a second stipulation regarding a

refund procedure, to which there was no objection by any intervenor. The examiner notes that all IXC customers of GTE were given individual mail notice of this proceeding and all but the three listed above chose not to intervene. The refund procedure established by the second stipulation appears reasonably calculated to ensure that the refunds due to IXC customers of GTE will occur. The examiner has recommended the adoption of both stipulations with a minor modification of the refund procedure based upon the confidentiality of information to be filed in a status report.

Sincerely,



J. Kay Trostle
Administrative Law Judge

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INQUIRY INTO THE MEET-POINT BILLING §
PRACTICES OF GTE SOUTHWEST, INCORPORATED §

PUBLIC UTILITY COMMISSION
OF TEXAS

EXAMINER'S REPORT

I. Procedural History

The inquiry which is the subject of the above styled and numbered docket was initiated on April 20, 1989, pursuant to a Commission directive in the Final Order adopted in Docket No. 5610, *Application of GTE Southwest, Inc. for a Rate Increase*, 15 P.U.C. BULL. 1, (February 23, 1989). This proceeding involves a GTE Southwest Inc.'s (GTE Southwest) telecommunications service or procedure referred to as meet-point billing; a procedure by which an interexchange carrier (IXC) is billed for the jointly provided local transport of an interLATA call between the GTE Southwest end office and the Southwestern Bell Telephone Company (SWB) tandem. See Attachment I. SWB's meet-point billing practices are not at issue in this docket.

The scope of this proceeding, as set forth in the Commission's Order in Docket No. 5610, is limited to the following issues:

1. Determination of an appropriate structure for GTE Southwest's switched-transport rate; and
2. Determination of the amount GTE Southwest must refund to the IXC's.

This docket was initially assigned to Administrative Law Judge (ALJ) Shelia Bailey Kneip and Hearings Examiner Amalija Hodgins, who established a prehearing schedule leading to the hearing on the merits. Intervenors to the docket include the Office of Public Utility Counsel (OPC), AT&T Communications of the Southwest, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and ClayDesta Communications, Inc. (ClayDesta). The General Counsel participated as a representative of the staff and the public interest. The case was

reassigned to ALJ Charles Smaistrla, who presided over the docket through the hearing on the merits. Upon Judge Smaistrla's resignation from the Commission, the docket was reassigned to ALJ J. Kay Trostle. The undersigned ALJ has reviewed the record and read all evidence submitted at the hearing.

The hearing on the merits was convened on July 26, 1989, at which time all parties made appearances. A public statement was made by Value-Line, a long distance telephone service out of Amarillo. Thereafter, settlement discussions ensued and were continued on July 28, 1989, at which time parties presented a full stipulation signed by all parties (Joint Exhibit I) related solely to the first issue which the Commission ordered be addressed in this docket, to wit: premium and nonpremium rate structure for the switched transport access provided by GTE Southwest. The stipulation includes, as attachments, proposed tariffs reflecting the provisions of the stipulation, as well as the testimony of GTE witness Bolin supporting the stipulation. The parties to the stipulation also agreed to the admissibility of the prefiled evidence of staff witness Lynne Mangold. AT&T also introduced as AT&T Exhibit 1, the guidelines of Multiple Exchange Carrier Access Billing (MECAB), which was admitted without objection. Finally, official notice was taken of certain portions of the Examiner's Report, Final Order and subsequent pleadings in Docket No. 5610. All other prefiled evidence was withdrawn.

With respect to the second issue the Commission ordered be investigated, the amount of refunds to be made by GTE, a full stipulation was reached between the General Counsel, representing the public interest, and GTE Southwest. That stipulation was filed, with supporting testimony, on August 8, 1989. The intervenor IXCs (MCI, AT&T and ClayDesta) did not join in the stipulation concerning the refund procedure because they had reached individual private settlements with GTE. After reviewing the evidence submitted on August 8,

1989, and having received no objections thereto, the undersigned issued Examiner's Order No. 8 admitting it into evidence and adjourning the hearing. Examiner's Order No. 8 also notifies the party that official notice will be taken of the June 5, 1989 affidavit of mailing of notice to all of GTE Southwest's IXC customers, which was filed with the Commission on June 6, 1989.

II. Jurisdiction

The Commission has jurisdiction over the subject matter of this inquiry pursuant to Sections 16(a) and 42 of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1989). The Commission's jurisdiction over the rates, operations and services of GTE Southwest arises under Section 16(a) and 18(b) of PURA.

III. Stipulation and Recommendation Concerning Rate Structure for GTE Southwest's Intrastate Texas Switched Transport Access

All of the parties to the docket entered into a stipulation regarding the appropriate rate structure for GTE Southwest's intrastate Texas switched transport access rates. That stipulation, absent the supporting testimony of Dana Bolin, is included herein as Attachment II. Based upon the evidence admitted in support of the stipulation, the examiner recommends it be accepted and the rates established therein, as reflected on the tariff sheets attached thereto, be approved.

On April 4, 1989, interim approval was given to GTE-Southwest's intrastate Texas premium and nonpremium local transport access rates. Those rates were made effective February 23, 1989, subject to revision in this docket. The stipulation of the parties includes the reduction of the premium rate from \$.00111413 per access minute per mile to \$.00089571 per access minute per mile. The nonpremium rate is reduced under the stipulation from \$.00412645 per access minute to \$.00331748 per access minute.

[1] The premium rate was derived by a nine step calculation, reflected on Attachment III hereto. GTE utilized 1987 data because that was the test year utilized in Docket No. 5610. Mr. Bolin began with the total 1987 premium switched transport revenues, broken out by switched transport billing on behalf of SWB and other LECs at GTE rates. He next derived a theoretical number of premium minute miles billed by dividing the total premium switched transport billing by the premium switched transport rate prior to Docket No. 5610 (\$.00113905). He divided that number by 12 to derive the monthly premium minute miles. His next calculation was to revise the total revenue by reducing it by \$300,000, as ordered in Docket No. 5610. He further reduced the total revenue by the difference between the amount billed on behalf of SWB at GTE's rate versus SWB's rate. The composite premium switched transport rate was then figured by dividing the revised billing figure by the calculated minute miles. That number was further divided by 12 to arrive at a monthly rate.

The nonpremium rate was calculated utilizing the same percentage reduction which resulted from the current to the proposed premium rate. That percentage reduction, 19.6 percent, was applied to the current nonpremium rate to arrive at the proposed rate per access minute. That calculation is shown on Attachment IV hereto.

In Docket No. 5610, the Commission approved a revenue requirement for switched access totalling \$41,410,000, which included \$14,221,000 for recurring switched transport. Of the \$14.2 million revenue requirement, \$13,996,000 was attributable to distance sensitive transport, while \$225,000 was generated from other switched transport services. The premium switched transport rate agreed to in the stipulation will recover a net amount of \$13,996,000 plus the amount legally collected on behalf of other LEC's. In 1987, GTE legally collected and remitted to other LEC's a total of \$7,356,161. Adding the approved revenue requirement and the billing for other LECs, results in total revenue of \$21,352,161. Dividing that sum by the proposed rate, results in a need to bill approximately 23.8 billion minute miles of switched transport. Staff witness Mangold determined that estimate is within a range of reasonableness.

Because \$225,000 of the test year revenue was derived from nonpremium switched transport, the revenue impact of those adjustments will be negligible. The staff therefore concurred with GTE's proposal to revise the nonpremium switched transport rate proportionately.

The stipulation establishes an effective date for the new rates of February 23, 1989. It also provides for the following modifications to the tariffs: (1) setting out the situations in which the proposed switched transport rate will be applicable; (2) a reference to the National Exchange Carrier Association, Inc. FCC Tariff No. 4 billing percentages to be used to determine the portion of service provided by GTE and other LECs in jointly provided switched (and/or local) transport arrangements; (3) procedures for notification of IXCs of any changes to jointly provided transport in accordance with MECAB guidelines; and (4) a reference to the MECAB guidelines in the listing of references to technical publications. The new rates will be implemented 15 business days following Commission approval of the stipulation, which also contains a schedule for crediting IXC customers' bills for the period from February 23, 1989 to the date of implementation of the new rates.

Based upon the evidence and stipulation of all parties, the examiner finds that the proposed new premium and nonpremium switched transport access rates are just and reasonable and recommends their approval.

IV. Stipulation and Recommendation Regarding Refund Procedure

The second issue which the Commission ordered addressed in this docket is the amount that GTE Southwest must refund to IXCs. A stipulation regarding a refund procedure was entered into by GTE Southwest and General Counsel. See Attachment V. The intervening IXCs, (MCI, AT&T and ClayDesta) did not join in this second stipulation because they had reached individual private settlements regarding the amount and procedure for refunds from GTE Southwest. The stipulation, and evidence in support thereof, indicates that the individual settlements will not affect the ability of GTE Southwest to issue refunds to

nonintervening IXC customers and establishes a procedure to ensure that all nonintervening IXC customers have the opportunity to receive a refund as a result of this docket. Based upon the evidence submitted in support of the refund stipulation and for the reasons discussed below, the examiner recommends approval of the refund procedure stipulation with one minor modification.

The stipulation begins with GTE Southwest's agreement to cease the meet-point billing practice identified in Docket No. 5610 as illegal, effective February 23, 1989. Therefore, the period of overcollection of monies resulting from past meet-point billing practices will be from January 1, 1984 through February 22, 1989. IXC customers may be eligible for refund under the stipulated refund procedure if: (1) the carrier paid switched transport to GTE Southwest; (2) the switched transport was jointly provided by GTE Southwest and another local exchange company; and (3) GTE Southwest performed the billing function.

The refund procedure agreed to by GTE is as follows:

- a. GTE Southwest will designate individuals to administer and coordinate the refund process, and to work with General Counsel on matters related to the refund, within 10 days of Commission approval of the stipulation;
- b. GTE Southwest will prepare a comprehensive list of IXCs that may be eligible for refund and will prepare a Refund Plan, including a dated schedule of events reflecting, at a minimum, the period during which the telephone company will calculate and negotiate with customers, within 20 days of Commission approval of the stipulation;
- c. GTE Southwest will provide notice by certified mail to all past and current IXC customers, and by first class mail to all IXCs on

the service list of Docket No. 7790 not provided notice by certified mail, and by published notice in the Texas Register. (The examiner notes that only state agencies are allowed to publish notice in the Texas Register, and therefore assumes that the General Counsel will coordinate through the Hearings Division to arrange notice of the refund procedure under the stipulation.)

- d. GTE Southwest will negotiate with and calculate individual refunds for each eligible IXC customer and schedule the actual payment of the refund within 180 days following Commission approval of the stipulation; and
- e. Where settlement is reached between GTE Southwest and nonintervening IXC customers, the recipients will receive all refund payments no later than one year following Commission approval of the stipulation.

In addition, GTE Southwest agreed to the following reporting requirements:

- a. It will file with the Commission a list of IXCs that may be eligible for refund and the Refund Plan within 20 days of Commission approval of the stipulation;
- b. It will file affidavits of notice within seven days of completion of the notice;
- c. On or before the 225th day following Commission approval of the stipulation, it will file with the Commission a report on the status of the refund plan. The report will include a list of

refund recipients, the individual amounts refunded or to be refunded, the total value of all refunds, the primary contact of each interexchange customer, the account number (phone number), the time of payment for each customer, and the method of payment (check or bill credit). The stipulation establishes this filing will be under a protective agreement but the General Counsel does not waive its right to contest the confidentiality of the document at any time; and

- d. If an eligible customer cannot or does not receive a refund due to dissolution or some other reason, the company will provide a full explanation of the circumstances in the status report described in paragraph c above, which explanation will be subject to questioning and clarification by the General Counsel.

GTE Southwest agreed in the stipulation that the refund monies returned as a result of the stipulation, and the individual agreements reached with AT&T, MCI and ClayDesta would not be claimed as an expense in any future rate case or as a toll pool expense. The stipulation states that the refund will have no financial impact on the regulated services of GTE Southwest. Finally, the stipulation states that it does not waive or affect the rights of eligible nonintervening interexchange carriers customers to receive any refund.

Staff witness Mangold filed testimony in support of the stipulation. She testified that the stipulation established a procedure which placed the burden of calculating refunds and negotiating with the nonintervening interexchange carrier customers on GTE Southwest. She was of the opinion that the procedure allows appropriate regulatory review to assure full compliance of the company's obligation to refund and presents a proper balance between maximum oversight over a refund process and minimal intervention with customers' rights and relations with the telephone company. GTE Southwest witness Oscar Gomez

testified that the settlements reached with AT&T, MCI, and ClayDesta would not affect the ability of the company to issue refunds to nonintervening interexchange carriers, nor would it impact the amounts the nonintervening interexchange carriers would receive under the stipulation.

Although the stipulation fails to establish the amount of refund which GTE will make, as directed by the Commission in its Final Order in Docket No. 5610, the examiner finds that it establishes a procedure that is reasonably calculated to ensure that all IXC customers entitled to refunds during the period January 1, 1984 through February 22, 1989, will receive a refund. The stipulation does not preclude non-intervening IXCs from filing complaints under PURA Section 42. The procedure also is in compliance with GTE Southwest's existing tariff concerning resolution of billing disputes, which establishes a procedure whereby the telephone company and customers may reach agreement amongst themselves without Commission intervention. General Telephone Company of the Southwest's Texas Facilities for State Access Tariff Section 2.4.1(D)(2) (Approved November 1, 1986). See Attachment VI.

The examiner recommends one modification to the stipulation, which is intended as a minor modification. In particular, the examiner is concerned with paragraph 4.c. which requires that the status report on the refund plan be filed under a protective agreement. The examiner recommends that only two items in the report be subject to a protective agreement, and the remainder be an open record. In particular, the examiner finds no reason that the following information should not be provided as an open record: a list of refund recipients, the total value of all refunds, the primary contact of each interexchange carrier customer, the time for payment for each customer, and the method of payment (check or bill credit). This would leave subject to a protective agreement that portion of the report which specifies the individual amounts refunded or to be refunded, and the account number (phone number) of the refund recipient. There is no evidence of the need for confidentiality of the information which the examiner finds should be an open record. The

information concerning identification of IXC customers is already public, as it is part of the affidavit concerning notice in this docket. The total value of the refunds and time and method of payment is information that will be needed in future rate cases to assure that the refunds have no financial impact on the regulated service of GTE Southwest. The examiner concludes that filing this information on the refund plan as an open record will help to ensure protection of the public interest by subjecting it to public scrutiny. Although the signatories to the second stipulation failed to provide evidence of the need for confidentiality of any of the information, it is reasonable to infer the need to protect from public disclosure the individual negotiations with customers and the customers' account numbers. The examiner further recommends that upon approval of the refund procedure, the Compliance Officer of the Commission assign a project number to this matter in order that the reports to be filed under the stipulation may be tracked by any interested party. The examiner recommends acceptance of the stipulated refund procedure with the one modification discussed herein.

V. Summary and Conclusions

This docket arose as a result of the Commission's action in Docket No. 5610 in which a contested docketed proceeding was ordered to be undertaken to determine an appropriate structure for the company's switched transport rates and the amount that GTE Southwest would refund to its interexchange carrier customers. All parties to the docket signed a stipulation concerning the rate structure for premium and nonpremium switched transport access. The intervening IXCs, AT&T, MCI and ClayDesta, reached individual private settlements concerning refunds to be made to them by GTE Southwest. General Counsel and the company then entered into a second stipulation regarding a refund procedure, to which there was no objection by any intervenor. The examiner notes that all IXC customers of GTE were given individual mail notice of this proceeding and all but the three listed above chose not to intervene. The refund procedure established by the second stipulation appears reasonably

calculated to ensure that the refunds due to IXC customers of GTE will occur. The examiner has recommended the adoption of both stipulations with a minor modification of the refund procedure based upon the confidentiality of information to be filed in a status report.

VI. Findings of Fact and Conclusions of Law

The examiner recommends the Commission adopt the following findings of fact and conclusions of law.

A. Findings of Fact

1. This docket was initiated on April 20, 1989, to consider two issues which the Commission, in its Final Order in Docket No. 5610, ordered be considered in a contested case, including: the appropriate structure for GTE-Southwest's Intrastate Texas Switched Transport Access rates; and the amount GTE-Southwest must refund to the interexchange carriers (IXCs).
2. On April 4, 1989, the Commission gave interim approval to GTE-Southwest's proposed intrastate Texas premium local transport local access rate of \$.00111413 and its nonpremium rate of \$.00412645. Those interim rates were made effective February 23, 1989, subject to revision in this docket.
3. Notice of this proceeding was given by mail to all IXCs served by GTE Southwest on June 5, 1989.
4. The intervenors in this docket were AT&T, MCI, ClayDesta (referred to as the intervening IXCs), and OPC.
5. All parties to the docket, as well as the General Counsel, reached agreement regarding the first of the two issues, the appropriate rate structure for intrastate Texas switched transport access rates.

6. GTE Southwest's intrastate Texas premium switched transport access rate will be reduced to \$.00089571 per access minute per mile.
7. GTE Southwest's nonpremium intrastate Texas switched transport access rate will be reduced to \$.00331748 per access minute.
8. The rates will apply where:
 - a. GTE Southwest is the sole provider of switched transport; or
 - b. GTE Southwest is the billing agent for switched (and/or local) transport that is jointly provided by GTE Southwest with one or more local exchange carriers and where GTE-Southwest owns the end office switch; or
 - c. GTE Southwest is the billing agent for the GTE Southwest owned portion of the switched (and/or local) transport jointly provided by GTE Southwest with one or more local exchange carriers.
9. The new rates and tariff changes will be effective February 23, 1989.
10. The intervening IXCs reached individual private settlements regarding the amount of refund and refund procedure with GTE Southwest.
11. The individual settlements with the intervening IXCs will not affect the ability of GTE Southwest to issue refunds to nonintervening IXC customers.
12. The period of overcollection of monies resulting from GTE Southwest's past meet-point billing practices is from January 1, 1984 through February 22, 1989.
13. IXC customers may be eligible for a refund if: (1) the carrier paid switched transport to GTE Southwest; (2) the switched transport was jointly

provided by GTE Southwest and another local exchange company; and (3) GTE Southwest performed the billing function.

14. The intervening IXCs will not be eligible for any additional refund under the stipulated refund procedure since those carriers reached individual settlements with GTE Southwest.

15. The refund procedure discussed in Section IV of the Examiner's Report is reasonably calculated to ensure that eligible nonintervening IXCs receive refunds.

16. The reporting requirements set out in the refund stipulation, discussed in Section IV of the Examiner's Report, are reasonable with the exception of the confidentiality of the status report discussed by the examiner. With the modification to the confidentiality of certain portions of that report as recommended by the examiner, the reporting requirements are found to be reasonable.

17. The monies returned as a result of the refund stipulation and the individual agreements reached with the intervening IXCs, will not be claimed as an expense in any future rate case and will not be claimed as a toll pool expense.

18. The refunds to be made under the stipulated refund procedure, and pursuant to the individual agreements reached with the intervening IXCs, will not have a financial impact on the regulated services of GTE Southwest.

19. The stipulated refund procedure to be followed by GTE Southwest will not affect the rights of eligible nonintervening interexchange carrier customers to receive a refund.

B. Conclusions of Law

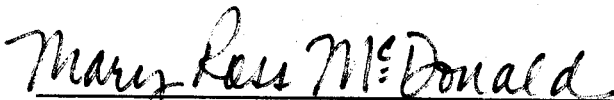
1. GTE Southwest is a public utility as that term is defined in Section 3(c) of PURA and is a local exchange company as that term is defined by Section 3(v) of PURA.
2. The Commission has jurisdiction over this inquiry under Sections 16(a), 18(b), and 42 of PURA.
3. Proper notice was provided of the docket as required by the examiner pursuant to P.U.C. PROC. R. 21.25.
4. The rates established for GTE Southwest's intrastate Texas switch transport access are just and reasonable; are not unreasonably preferential, prejudicial or discriminatory; and are sufficient, equitable, and consistent in application to each class of consumers. PURA Section 38.
5. Acceptance of the parties' stipulations in this case is in the public interest. PURA Section 16(a) and Tex. Rev. Civ. Stat. Ann. art. 6252-13a Section 13(e).

Respectfully submitted,



J. KAY TROSTLE
ADMINISTRATIVE LAW JUDGE

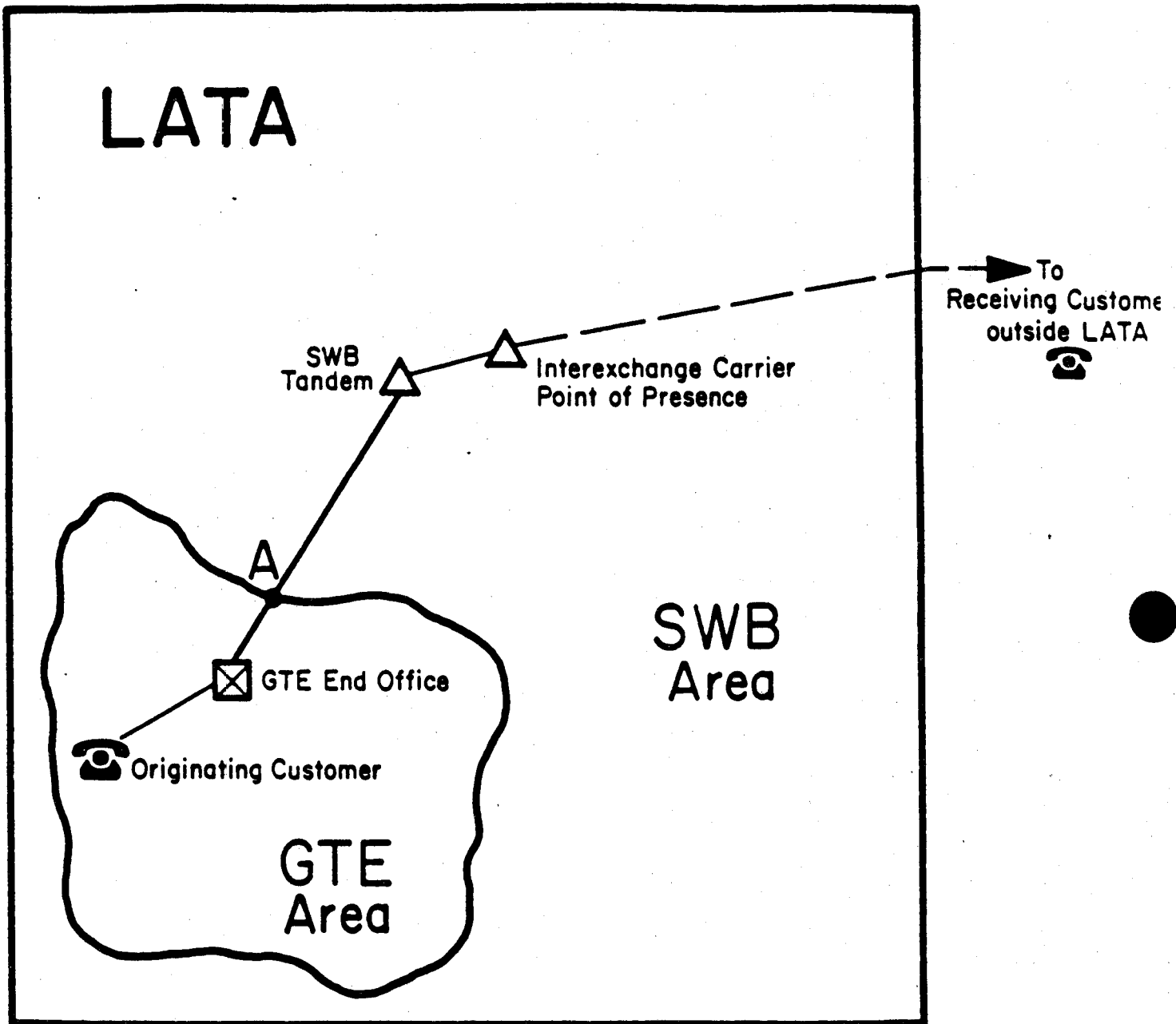
APPROVED on this the 13th day of October 1989.



MARY ROSS McDONALD
DIRECTOR OF HEARINGS

nsh

MEET-POINT BILLING EXAMPLE



----- Interexchange Transmission
 _____ Jointly Provided Local Transport
 A Meet Point

The line from the originating customer represents an intrastate interLATA call carried by an interexchange carrier.

Meet-point billing.--GTE bills the interexchange carrier for the jointly provided local transport of the call from the GTE end office to the SWB tandem; GTE remits payment to SWB for the local transport from Point A (the "meet point") to SWB's tandem.

DOCKET 8730

INQUIRY INTO THE MEET-POINT § PUBLIC UTILITY COMMISSION
BILLING PRACTICES OF GTE §
SOUTHWEST INCORPORATED § OF TEXAS

STIPULATION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW GTE Southwest Incorporated ("GTE-SW"), AT&T Communications of the Southwest, Inc. ("AT&T"), ClayDesta Communication, Inc. ("ClayDesta"), MCI Telecommunications Corporation ("MCI"), the Office of Public Utility Counsel ("OPC"), and General Counsel, Texas Public Utility Commission ("General Counsel"), the "parties" herein, and through their undersigned representatives submit this Stipulation for approval in the above-referenced docket. The parties to this Stipulation stipulate and agree as follows:

WHEREAS, the Public Utility Commission ("PUC") ordered GTE-SW to file a revised intrastate Texas switched transport access rate structure as part of GTE-SW's compliance tariff filings in PUC Docket No. 5610, Application of GTE Southwest Incorporated for Authority to Change Rates;

WHEREAS, the PUC ordered the initiation of a separate docketed proceeding to consider the following issues: (1) the appropriate structure for GTE-SW's intrastate Texas switched transport access rates and (2)

the amount that GTE-SW must refund to the interexchange carriers;

WHEREAS, PUC Docket No. 8730, Inquiry into the Meet-Point Billing Practices of GTE Southwest Incorporated was initiated on April 20, 1989 to consider the above-referenced issues;

WHEREAS, on April 4, 1989, the Commission gave interim approval to GTE-SW's proposed intrastate Texas premium local transport access rate of \$.00111413 and GTE-SW's proposed intrastate Texas non-premium local transport access rate of \$.00412645. Those rates were made effective February 23, 1989, subject to revision in PUC Docket No. 8730;

WHEREAS, the parties have reached agreement regarding the first of the two issues presented in Docket No. 8730, namely, the appropriate rate structure for GTE-SW's intrastate Texas switched transport access rates;

WHEREAS, nothing in this Stipulation concerns or is intended to resolve the issue of the amount that GTE-SW must refund to the interexchange carriers;

NOW, THEREFORE, the parties agree and stipulate as follows:

1. GTE-SW agrees to modify Section 4.6.2 of GTE-SW's Texas Facilities for State Access Tariff, issued February 23, 1989, 4th Revised Page 62, as follows:

- a. the intrastate Texas premium switched transport access rate will be changed from \$.00111413 per minute per mile to \$.00089571 per access minute per mile;
- b. the non-premium intrastate Texas switched transport access rate will be changed from \$.00412645 per access minute to \$.00331748 per access minute; and
- c. Section 4.6.2 will be modified consistent with the following provisions:

The rates in §4.6.2 apply where:

- (1) GTE-SW is the sole provider of switched transport; or
- (2) GTE-SW is the billing agent for switched (and/or local) transport that is jointly-provided by GTE-SW with one or more local exchange carriers and where GTE-SW owns the end office switch; or
- (3) GTE-SW is the billing agent for the GTE-SW owned portion of the switched (and/or local) transport jointly-provided by GTE-SW with one or more local exchange carriers.

The parties have also agreed to additional clarifying tariff language. True and correct copies of all tariffs affected by this Stipulation are attached hereto as Attachment A. All of the aforementioned rate and tariff changes will be effective February 23, 1989.

2. GTE-SW agrees to implement the revised rates shown in paragraph 1 as soon as practicable after PUC approval of this Stipulation, but no later than fifteen (15) business days following such approval. The first access customer bills GTE-SW prepares after implementation of the rates set out in paragraph 1 of this Stipulation shall include a credit for all intrastate Texas local and/or switched transport access billed by GTE-SW, where such local and/or switched transport access was obtained by the access customer on and after February 23, 1989 through the date of such bill. The credit referenced in this paragraph 2 will be based upon the difference between the rate GTE-SW actually charged the customer for such transport and the applicable intrastate Texas premium and non-premium transport access rates specified in paragraph 1 of this Stipulation.

3. The parties agree to move for the admission of the revised prefiled testimony of Dana Bolin into evidence, a copy of which is attached as Attachment B. The parties also agree to move for the admission of the following portions of the prefiled testimony of Lynne Mangold: Section III (page 10, line 13 through line 17 of page 17, and lines 22-25 of page 17), and lines 14-25 on page 26 and all associated appendices. All of the aforementioned testimony is offered for the limited purpose of supporting this Stipulation, and the parties

agree to waive cross-examination with respect to such testimony. The parties do not waive cross-examination with respect to any other testimony offered in this Docket No. 8730, including, without limitation, any other testimony offered in this Docket No. 8730 by Dana Bolin. If any part or any portion of the testimony enclosed as Attachment B is used for any other purpose, the parties reserve the right to cross-examine or otherwise challenge the content of the testimony.

4. Notwithstanding any provision to the contrary in this Stipulation, the parties do not waive any rights they may have in this proceeding regarding the amount that GTE-SW must refund to the interexchange carriers.

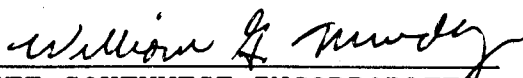
5. Notwithstanding any provision to the contrary in this Stipulation, the parties do not waive any rights they may have in any other pending or future proceeding or proceedings, including, without limitation, the right to challenge the rates recommended herein in a general rate proceeding. The parties hereto shall not be deemed to have approved or acquiesced in any particular rate design or ratemaking approach, and the parties shall not be deemed to have approved or acquiesced in any particular meet-point billing option or any particular option for jointly-provided access. This Stipulation represents a negotiated settlement of GTE-SW's intrastate Texas switched transport access rate

structure for purposes of this particular proceeding only.

6. The parties agree that if the Stipulation or tariff is modified in any respect by the Administrative Law Judge, Hearings Examiner or by the Commission, then each party reserves its right to withdraw its consent to the Stipulation.

WHEREFORE, PREMISES CONSIDERED, the parties hereby jointly move the Administrative Law Judge for approval of this Stipulation.

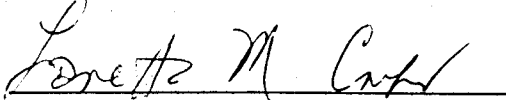
Dated this 28th day of July, 1989, in Austin, Texas.



GTE SOUTHWEST INCORPORATED


AT&T COMMUNICATIONS OF THE
SOUTHWEST, INC.


CLAYDESTA COMMUNICATIONS INC.


MCI TELECOMMUNICATIONS CORPORATION


OFFICE OF PUBLIC UTILITY COUNSEL


GENERAL COUNSEL
PUBLIC UTILITY COMMISSION

Docket No. 8730
Stipulation
Attachment A

ATTACHMENT A

FACILITIES FOR STATE ACCESS

4. SWITCHED FACILITIES FOR STATE ACCESS (Cont'd)

4.6 Rates and Charges

4.6.1 Access Connection

(A) Standard Arrangements

	<u>GSEC</u>	<u>Nonrecurring</u>	<u>GSEC</u>	<u>Rate Per</u>
		<u>Charge</u>		<u>Month</u>
Per Line or Trunk.....	NASWT1	\$ 78.05	--	

Network Blocking Charge:

Applies to FGC and FGD, Per Call.....	--		ANBC	\$.036
--	----	--	------	---------

4.6.2 Switched Transport Arrangements (1)

(N)

(A) Standard Arrangements

	<u>GSEC</u>		
Each originating and terminating access minute			
Premium Rate per access minute, per mile.....		\$.00089571	(R)
Nonpremium Flat Monthly Rate...ASWT		37.14	
Nonpremium Per Access Minute...AFXSWT		.00331748	(R)

(1) The rates in §4.6.2 apply where:

(N)

- (1) The Telephone Company is the sole provider of switched transport;
or
- (2) The Telephone Company is the billing agent for switched (and/or local) transport that is jointly provided by the Telephone Company with one or more local exchange carriers and where the Telephone Company owns the end office switch; or
- (3) The Telephone Company is the billing agent for the Telephone Company-owned portion of the switched (and/or local) transport jointly provided by the Telephone Company with one or more local exchange carriers.

(N)

4.6.3 End Office Services

(A) Standard Arrangements

The rates for Common Line Terminations and End Office Switching are based on originating and terminating Access Minutes.

	<u>GSEC</u>	<u>Per Access Minute</u>
Premium Rates:		
Common Line Termination.....		\$.010733333
End Office Switching 1:		
Applicable for FGA.....		.008536585
Applicable for FGB.....		.008536585
End Office Switching 2:		
Applicable for FGC.....		.013089431
Applicable for FGD.....		.013089431
Intercept.....		.000026550

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FACILITIES FOR STATE ACCESS

4. SWITCHED FACILITIES FOR STATE ACCESS (Cont'd)

4.6.3(A) (Cont'd)

Non-Premium Rates:

Common Line Termination:			
Flat Monthly Rate.....	ACLT	67.67	
Per Access Minute.....	AFXCLT	.004830000	
End Office Switching:			
Flat Monthly Rate.....	AEOS	82.91	
Per Access Minute.....	AFXEOS	.005890244	
Intercept:			
Flat Monthly Rate.....	AINTRCPT	.11	
Per Access Minute.....	AFXINTRCPT	.00001195	

(M)

(M)

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By Oscar C. Gomez, Vice President - Regulatory & Governmental Affairs
 2701 South Johnson Street, San Angelo, Texas 76901

FACILITIES FOR STATE ACCESS

4. SWITCHED ACCESS (Cont'd)4.2 Description of Switched Access (Cont'd)4.2.3 Description of Switched Transports (Cont'd)(A) General (Cont'd)

- (2) The Switched Transport is a two-way voice frequency transmission path composed of facilities determined by the Telephone Company. The two-way voice frequency path permits the transport of calls in the originating direction (from the end office switch to the wire center that normally serves the SC point presence) and in the terminating direction (from the wire center that normally serves the SC point of presence to the end office switch), but not simultaneously. The voice frequency transmission path may be comprised of any form of configuration of plant capable of and typically used in the telecommunications industry for the transmission of the human voice and associated telephone signals within the frequency bandwidth of approximately 300 to 3000 Hz.

The Telephone Company will work cooperatively with the customer in determining (1) whether the service is to be directly routed to an end office switch or through an access tandem switch, and (2) the directionality of the service.

- (3) Switched Transport is provided at the rates and charges as set forth in 4.6.2 following.
- (4) For switched (and/or local) transport that is jointly-provided by the Telephone Company with one or more local exchange carriers, the billing percentages as set forth in National Exchange Carrier Association, Inc. FCC Tariff No. 4, Section 106, will be used to determine the portion of the service provided by the Telephone Company and the other local exchange carriers.
- (5) Notification of implementation of, or changes to, jointly-provided transport shall be provided in accordance with MECAB §6.01, relating to Notification.

(N)

(N)

(B) Standard interface Arrangements

Switched Transport is provided in a number of separate Interface Arrangements. Each Interface Arrangement provides a specified facility interface (e.g., two-wire, four-wire, DSL, etc.). Each High Capacity Analog or Digital Interface Arrangement as listed following is subject to the minimum Busy Hour Minutes of Capacity requirements when ordered as set forth in 3.5.5 preceding. Provision of the Interface Arrangements and any Optional Arrangements may require placement of Telephone Company equipment (e.g., supervisory signaling equipment as described in 4.2.3(C)(4) following) on the SC's premises.

FACILITIES FOR STATE ACCESS

REFERENCE TO OTHER TARIFFS

Whenever reference is made in this tariff to other tariffs the reference is to the tariffs in force as of the effective date of this tariff, and to amendments thereto and successive issues thereof.

REFERENCE TO TECHNICAL PUBLICATIONS

Reference is made in this tariff to the following Technical Publications:

- Section 2.5 (1) NECA Technical Reference Publication AS No. 1 - Issued March, 1984; entire issue
- Sections 4.2.15,
5.1.5, 5.2, 5.3, (2) GTE Technical Interface Reference Manual, Issue 2 -
5.4.2(A), Issued August, 1984, Revised December 1985;
5.4.2(B), and Section 7000
6.6(B)(1)
- Section 5.4.1(E) (1) AT&T Technical Reference Publication 41014 - Issued February, 1978; entire issue
- Section 3.2.6(D), (2) GTE Service Corporation Telephone Operations - Traffic
3.2.2, 3.2.7, Grade of Service Standards, Issued April, 1985; entire
4.2.16(B), issue
4.2.16(C), and
4.6.4
- Section 4.2.3(A)(5) (1) Multiple Exchange Carrier Access Billing ("MECAB") (N)
guidelines Issued November 9, 1987. (N)
- (1) Available from Literary Data Center, Inc., G.P.O. Box C-9014, Brooklyn, New York 11202.
- (2) Available from GTE Practices Group, GTE Service Corporation, Education and Support Department, P.O. Box 8300, 3050 Harrodsburg Rd., Lexington, Kentucky 40533.

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1987 SWITCHED TRANSPORT BILLING

1.	Total Switched Transport Revenue - GTESW Facilities	\$ 12,357,355
2.	Switched Transport Billed on Behalf of SWB and Remitted to SWB	7,344,639
3.	Switched Transport Billed on Behalf of Other LECs - Difference Between GTESW and Other LECs' Rates	4,970,899
4.	Total Billing by GTESW (L1 + L2 + L3)	24,672,893
5.	Switched Transport Rate (Prior to Docket 5610)	.00113905
6.	Calculated Minute/Miles Billed per Month (L4 ÷ L5 ÷ 12)	1,805,078,282
7.	5610 Ordered Reduction	300,000
8.	Revised Billing (L4 - L3 - L7)	19,401,994
9.	Composite Premium Monthly Switched Transport Rate (L8 ÷ L6 ÷ 12)	.00089571

Docket No. 8730
Non-Premium Rate Calculation

	<u>Amount</u>
1. Current Premium Rate	\$.00111413
2. Proposed Premium Rate	\$.00089571
3. Difference (line 1 - line 2)	\$.00021842
4. Percent Premium Rate Reduction (line 3 ÷ line 1)	19.604534%
5. Current Non-Premium Rate	\$.00412645
6. Percent Non-Premium Rate Reduction (same as line 4)	19.604534%
7. Proposed Non-Premium Rate Reduction (line 5 x line 6)	\$.00080897
8. Proposed Non-Premium Rate (line 5 - line 7)	\$.00331748

DOCKET NO. 8730

INQUIRY INTO THE MEET-POINT
BILLING PRACTICES OF GTE
SOUTHWEST INCORPORATED

§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

1989 MAR -8 PM 3:29

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PUBLIC UTILITY COMMISSION
FILED CLERK

STIPULATION REGARDING REFUND PROCEDURE

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

COMES NOW GTE Southwest Incorporated ("GTE SW") and General Counsel of the Public Utility Commission of Texas ("General Counsel"), the "parties" herein, and through their undersigned representatives submit this Stipulation Regarding Refund Procedure ("Stipulation") in the above-referenced docket. The parties to this Stipulation stipulate and agree as follows:

WHEREAS, in Docket No. 5610, Application of GTE Southwest Incorporated for Authority to Change Rates, the Public Utility Commission of Texas ("Commission") ordered the initiation of a separate proceeding to consider the following issues: (1) the appropriate structure for GTE SW's intrastate Texas switched transport access rates, and (2) the amount that GTE SW must refund to the interexchange carriers;

WHEREAS, Docket No. 8730, Inquiry into the Meet-Point Billing Practices of GTE Southwest Incorporated, was initiated on April 20, 1989 to consider the above-referenced issues;

WHEREAS, the first issue was resolved and all intervening parties executed and submitted a separate stipulation that is now pending for Commission approval;

WHEREAS, the intervening interexchange carriers, AT&T Communications of the Southwest, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI"), and ClayDesta Communication, Inc. ("ClayDesta") reached individual settlements regarding the amount of refund and refund procedure with GTESW;

WHEREAS, GTESW and General Counsel agree that the individual settlements between GTESW and AT&T, MCI, and ClayDesta will not affect the ability of GTESW to issue refunds to the nonintervening interexchange carrier customers; and

WHEREAS, in order to ensure that all nonintervening interexchange carriers have the opportunity to receive a refund as a result of this inquiry;

NOW, THEREFORE, the parties agree and stipulate as follows:

1. GTESW agrees to cease the meet-point billing practice identified at pages 150-151 of the Examiner's Report in Docket No. 5610 ("Meet Point Billing Practice") effective February 23, 1989. Those portions of the Examiner's Report are attached herein as Attachment 1 and is incorporated herein for all purposes. Therefore, the period of overcollection of monies resulting from GTESW's past meet-point billing practices is from 1984 through February 22, 1989.

2. An interexchange carrier may be eligible for a refund under this stipulated refund procedure if: (1) the carrier paid switched transport to GTESW, (2) the switched transport was jointly-provided by GTESW and another local exchange company, and (3) GTESW performed the billing function. AT&T, MCI, and ClayDesta are not eligible for any

additional refund under this stipulated refund procedure since these carriers have reached individual settlements with GTESW.

3. GTESW agrees to the following refund procedure:

- a. Within ten (10) days of Commission approval of this Stipulation, GTESW shall designate individuals to administer and to coordinate the refund process, as well as, to interface with General Counsel, if necessary, on matters relating to the refund.
- b. Within twenty (20) days of Commission approval of this Stipulation, GTESW shall prepare a comprehensive list of interexchange carriers that may be eligible for a refund.
- c. Within twenty (20) days of Commission approval of the Stipulation, GTESW shall prepare a Refund Plan, which shall include a dated schedule of events reflecting, at a minimum, the period during which GTESW shall calculate and negotiate with customers.
- d. Within thirty (30) days of Commission approval of the stipulation, GTESW shall provide notice as follows:
 - (1) individual notice by certified mail to all past and current interexchange carriers customers of GTESW;
 - (2) individual notice by U. S. mail, first class, to all interexchange carriers listed on the Service List of Docket No. 7790 not provided notice in subsection (1) above;

(3) general notice published in the Texas Register.

The form of the individual notice is attached as Attachment 2 to this Stipulation and is incorporated herein for all purposes.

- e. Within 180 days following Commission approval of this Stipulation, GTESW shall negotiate with and calculate individual refunds for each eligible interexchange carrier customer, as well as, schedule the actual payment of refund.
- f. Where settlement is reached between GTESW and nonintervening interexchange carrier customers, such recipients shall receive all refund payments no later than one (1) year following Commission approval of this Stipulation.

4. GTESW agrees to the following reporting requirements regarding the refund procedure:

- a. Within twenty (20) days of Commission approval of the Stipulation, GTESW shall file with the Commission the list of interexchange carriers that may be eligible for a refund and the Refund Plan. One copy of each filing shall be delivered to General Counsel.
- b. Within seven (7) days after completion of the prescribed notice requirements, GTESW shall file with the Commission an Affidavit of Notice. One copy of this affidavit shall be delivered to General Counsel.

- c. On or before the 225th day following Commission approval of the Stipulation, GTESW shall file with the Commission a report on the status of the Refund Plan. The report shall include a list of refund recipients, the individual amounts refunded or to be refunded, the total value of all refunds, the primary contact of each interexchange carrier customer, the account number (phone number), the time for payment for each customer, and the method of payment (check or bill credit). General Counsel and GTESW agree that such filing shall be filed under a protective agreement. Such agreement does not waive General Counsel's right to contest the confidentiality of the document at any time.
- d. In the event an eligible customer cannot or does not receive a refund due to dissolution or some other reason, GTESW shall provide a full explanation of the circumstances. GTESW shall include this explanation in the status report described herein. General Counsel reserves the right to question and to clarify any explanations provided by GTESW.

5. GTESW agrees that the refunded monies returned as a result of this stipulation and the individual agreements reached with AT&T, MCI, and ClayDesta, shall not be claimed as an expense in any future rate case and shall not be claimed as a toll pool expense. These refunds shall have no financial impact on the regulated services of GTESW.

6. The parties agree to move for the admission of the Affidavits of Lynne Mangold and Oscar C. Gomez into evidence. The Affidavits are offered for the limited purpose of supporting this Stipulation, and the parties agree to waive cross-examination with respect to the Affidavits. If any part of the Affidavits are used for any other purpose, the parties reserve the right to cross-examine or to otherwise challenge the content of the Affidavits.

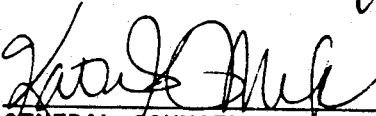
7. Notwithstanding any provision to the contrary in this Stipulation, the parties do not waive any rights they may have in any other pending or future proceeding or proceedings. This Stipulation defines the refund procedure to be followed by GTE SW, and does not waive or effect the rights of eligible nonintervening interexchange carriers customers to receive any refund.

8. The parties agree that if this Stipulation is modified in any respect by the Administrative Law Judge, Hearings Examiner, or by the Commission, then each party reserves its right withdraw its consent to the Stipulation.

WHEREFORE, PREMISES CONSIDERED, the parties hereby jointly move the Administrative Law Judge to approve this Stipulation.

Dated this 8th day of August, 1989, in Austin, Texas.


GTE SOUTHWEST INCORPORATED


GENERAL COUNSEL
PUBLIC UTILITY COMMISSION

revenue requirement for the company. GTE Southwest should be able to implement any revision to access charges adopted in a statewide proceeding just as well as any other local exchange carrier.

For the above reasons, the ALJ concludes that (1) it is not feasible to change GTE Southwest's ICAC rate in this case, (2) it would not be appropriate to implement an access-charge credit based on an ICAC revenue requirement as proposed by MCI, and (3) it is not necessary to implement an access-charge credit to preserve the Commission's ability to revise access charges in a statewide proceeding.

Accordingly, the ALJ recommends that the Commission (1) find that the just and reasonable level of the ICAC depends on the reasonable and necessary costs and the expected access traffic of all local exchange carriers in the state, (2) find that the current level of GTE Southwest's ICAC is just and reasonable as determined in Docket No. 5113, and (3) reject MCI's proposal to implement a credit to access-charge billings.

6. Meet-point Billing

a. *Overview.*--The basic elements of meet-point billing can best be understood with a diagram such as the one in Attachment 3 of this Report. In the diagram, an interLATA call originates in a GTE service area and is routed to an interexchange carrier's point of presence in Southwestern Bell's service area. Meet-point billing is the procedure by which the interexchange carrier is billed for the jointly provided local transport of the call between the GTE end office and the Bell tandem.

The tariff schedules of each company set forth the rates it charges for local transport. Pursuant to an agreement between GTE Southwest and Southwestern Bell signed in 1984, GTE Southwest bills and collects for the jointly provided local transport of calls originating in its service areas. GTE Southwest calculates the bills and pays Southwestern Bell in the following manner. It applies its own tariffed rate to the entire mileage between its end office and the Bell tandem and bills the interexchange carrier the resulting amount. It then applies Bell's tariffed rate to the distance from the meet point to the Bell tandem and pays Bell the resulting amount for Bell's portion of the local transport.

If the local transport rates of the two companies were the same, no problem would be created by the arrangement. However, since GTE Southwest's rates exceed Bell's rates, GTE Southwest has been collecting more for Bell's local transport than it has been remitting to Bell. (Bell is a neutral party in this procedure, and its meet-point billing practices are not in issue.) Apparently, rates for some local exchange carriers are higher than GTE Southwest's, so the company may in some cases collect less than it remits to the other carrier. But overall, GTE Southwest collects several million dollars more than it remits each year.

AT&T witness Meyer gave the following example of GTE Southwest's meet-point billing practice. Assume that an interexchange carrier originates 100,000 minutes of use from Ben Wheeler, which is in a GTE service area, and the calls are routed via local transport to Bell in Dallas. GTE Southwest would charge the interexchange carrier \$1,394 for the GTE portion of the local transport and \$6,351 for the Bell portion (both amounts calculated at GTE rates). However, according to Bell's tariffed rates, its local transport portion is only \$2,690, which is the amount that GTE Southwest remits to Bell. GTE Southwest retains the \$3,661 difference between the amount it collects on Bell's behalf and the amount it remits to Bell.

The General Counsel and the interexchange intervenors contend that GTE Southwest should not be allowed to bill and retain the excess revenues it collects as Bell's agent but does not remit to Bell. The ALJ agrees. GTE Southwest contends that its practice has been in accordance with FCC guidelines and its agreements with the other local exchange carriers. It proposes to file new rates that would "address" the windfall alleged by the parties. The main issues are (1) how should the practice be corrected, and (2) should GTE Southwest be required to refund past amounts it collected in excess of the amounts it remitted.

b. Position of the General Counsel and the interexchange carriers.--Ms. Meyer did not recommend specific intrastate local transport rates; rather, she recommended that the Commission require GTE Southwest to bill its portion of the local transport at its rates and to bill the remainder of the transport at the rates of the company with which it is sharing the transport. The method of billing she recommended is known as the single-bill, multiple-tariff method.

GENERAL TELEPHONE COMPANY
OF THE SOUTHWEST

TEXAS FACILITIES FOR STATE ACCESS TARIFF
SECTION 2
2nd Revised Page 10
Canceling 1st Revised Page 10

FACILITIES FOR STATE ACCESS

2. GENERAL REGULATIONS (Cont'd)

2.3 Obligations of the Customer (Cont'd)

2.3.11 Claims and Demands for Damages (Cont'd)

(B) The customer shall defend, indemnify and save harmless the Telephone Company from and against suits, claims, and demands by third persons arising out of the construction, installation, operation, maintenance, or removal of the customer's circuits, facilities, or equipment connected to the Telephone Company's FSA provided under this tariff including, without limitation, Workmen's Compensation claims, actions for infringement of copyright and/or unauthorized use of program material, libel and slander actions based on the content of communications transmitted over the customer's circuits, facilities or equipment, and proceedings to recover taxes, fines, or penalties for failure of the customer to obtain or maintain in effect any necessary certificates, permits, licenses or other authority to acquire or operate the FSA provided under this tariff; provided, however, the foregoing indemnification shall not apply to suits, claims, and demands to recover damages for damage to property, death, or personal injury unless such suits, claims or demands are based on the tortuous conduct of the customer, its officers, agents or employees.

2.3.12 Notification of Service-Affecting Activities

The SC shall notify the Telephone Company as soon as they are aware of the following: planned or unplanned outages of SC facilities which will affect the Telephone Company's capability to provide adequate service for anticipated traffic volumes; facility failures within the SC network which will adversely impact upon the Telephone Company's capability to provide adequate service for anticipated traffic volumes; and, SC marketing activities designed to generate rapid or short-term increases in anticipated traffic volumes. This timely notification will enable the Telephone Company to administer its network as set forth in 4.2.10 following. (T) (T)

2.3.13 (Reserved for Future Use)

2.4 Payment Arrangements and Credit Allowances

2.4.1 Payment of Charges and Deposits

(A) The Telephone Company may, in order to safeguard its interests, require a customer which has a proven history of late payments to the Telephone Company or does not have established credit.

ISSUED OCT 02 1986

EFFECTIVE

By W. Scott Hanle, Vice President--Revenue Requirements
2701 South Johnson Street, San Angelo, Texas 76901

786

PUBLIC UTILITY COMMISSION OF TEXAS APPROVED	
NOV 1 '86	DOCKET 5113
Control # 7045 BY _____	
TARIFF CLERK	

FACILITIES FOR STATE ACCESS

2. GENERAL REGULATIONS (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment of Charges and Deposits (Cont'd)

to make a deposit prior to or at any time after the provision of the FSA to the customer to be held by the Telephone Company as a guarantee of the payment of rates and charges. No such deposit will be required of a customer which is a successor of a company which has established credit and has no history of late payments to the Telephone Company. A deposit may not exceed the rates and charges for the FSA for a two month period. The fact that a deposit has been made in no way relieves the customer from complying with the Telephone Company's regulations as to advance payments or the prompt payment of bills. At such time as the provision of the FSA to the customer is terminated, the amount of the deposit will be credited to the customer's account and any credit balance which may remain will be refunded. After the customer has established a one year prompt payment record, such a deposit will be refunded or credited to the customer account at any time prior to the termination of the provision of the FSA to the customer. In case of a cash deposit, for the period the deposit is held by the Telephone Company, the customer will receive simple annual interest at the rate of 12%, unless a different rate has been established by the appropriate legal authority within the state in which the end user is located and the SC is serving.

- (B) Where the provision of FSA requires facilities that meet any of the conditions specified in 10.1.1 following, special construction charges as set forth in 10. following will apply.
- (C) The Telephone Company shall bill on a current basis all charges, including any applicable taxes, incurred by, and credits due to, the customer under this tariff attributable to FSA established or discontinued during the preceding billing period and shall bill in advance for all FSA to be provided during the ensuing billing period, except for charges associated with usage which will be billed in arrears. Such bills are due when rendered. Adjustments for the quantities of FSA established or discontinued in any billing period beyond the minimum period set forth in 2.4.2 following will be prorated to the number of days or major fraction of days based on a 30 day month. The Telephone Company will, upon request and if available, furnish such detailed information as may reasonably be required for verification of any bill.
- (D) All bills to the customer are due when rendered and are considered past due thirty (30) days after the bill date.

PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED
NOV 1 '86 DOCKET 5113
ISSUED JUN 9 BY [signature]
TARIFF CLERK

PUBLIC UTILITY COMMISSION OF TEXAS
INTERIM APPROVAL GRANTED
DOCKET 5113
TF # T-70-1 BY [signature]
TARIFF CLERK

By Richard D. [signature] Resident--Revenue Requirements,
2701 South Johnson Street, San Angelo, Texas 76901-04

FACILITIES FOR STATE ACCESS

2. GENERAL REGULATIONS (Cont'd)

2.4 Payment Arrangements and Credit Allowances (Cont'd)

2.4.1 Payment of Charges and Deposits (Cont'd)

- (1) If the entire amount billed, excluding any amount disputed by the customer, is not received by the Telephone Company within thirty (30) days after the bill date, an additional charge equal to 1/12 of the percentage rate for deposit interest as that set forth in 2.4.1(A), of the unpaid balance will be applied for each month or portion thereof that an outstanding balance remains. (C)
- (2) In the event that a billing dispute is resolved in favor of the Telephone Company, any payments withheld pending settlement of the dispute shall be subject to an additional charge equal to 1/12 of the percentage rate for deposit interest as that set forth in 2.4.1(A), of the amount of such disputed charges for each month or portion thereof that such charges were unpaid. If the customer paid both the disputed and nondisputed amount on or before the due date (i.e., bill date plus 30 days) and the dispute is resolved in favor of the customer, additional credit based on the disputed amount resolved from the Telephone Company will be granted to the customer if the billing dispute is not resolved within 10 working days following the date paid or the date the customer furnishes to the Telephone Company documentation to support its claim plus 10 working days, whichever date is later. The credit will be equal to the percentage rate specified in 2.4.1(D)(1) preceding of the disputed amount resolved for each month or portion thereof for which the payment was held. (N)
- (3) Late Payment Charges applicable to End User FSA, described in 13. following, are those set forth in the General and/or Local tariffs of the Telephone Company.

**PUBLIC UTILITY COMMISSION OF TEXAS
APPROVED**

NOV 1 '86 DOCKET 5113

BY _____
TARIFF CLERK

ISSUED JUN 4 1984

EFFECTIVE

By Richard D. Funk, Vice President--Revenue Requirements
2701 South Johnson Street, San Angelo, Texas

788

**PUBLIC UTILITY COMMISSION OF TEXAS
INTERIM APPROVAL GRANTED**

~~JUL 5 '84 DOCKET 5113~~

~~TF # T-70-1 BY _____
TARIFF CLERK~~

INQUIRY INTO THE MEET-POINT BILLING
PRACTICES OF GTE SOUTHWEST,
INCORPORATED

§
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§

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled inquiry was processed in accordance with applicable statutes by an Administrative Law Judge who prepared and filed a report containing Findings of Fact and Conclusions of Law. The Examiner's Report is hereby adopted and made a part of this Order, with the following modifications:

[2] The refund issue discussed in Section IV of the Examiner's Report is severed from the remainder of this docket, and is not adopted herein. No action is taken on the refund issue and therefore Findings of Fact Nos. 10 through 19 are not adopted. Conclusion of Law No. 5 is modified to read as follows:

5. Acceptance of the parties' stipulation establishing new rates in this case is in the public interest. PURA Section 16(a) and Tex. Rev. Civ. Stat. Ann. art. 6252-13a Section 13(e).

The Commission further issues the following Order:

- [1] 1. The change in rates reflected on the tariff sheets attached to the stipulation of all parties is hereby APPROVED, effective February 23, 1989.
- [1] 2. GTE-Southwest shall implement the rates set out in Findings of Fact Nos. 6 and 7 as soon as practical, but no later than 15 business days after the date of this Order. The first access customer bills prepared after implementation of the rates approved in this Order shall include a credit for all intrastate Texas local and/or switched transport access billed by GTE Southwest, where such local and/or switched transport access was obtained by the access customer on or after February 23, 1989,

through the date of the bill. The credit shall be based upon the difference between the rate GTE Southwest actually charged the customer for such transport and the applicable intrastate Texas premium and nonpremium transport rates approved herein.

3. Acceptance of the stipulation establishing new rates in this case does not indicate the Commission's endorsement or approval of any principal or methodology which may underlie the stipulation.
4. All motions, requests for entry of specific findings of fact and conclusions of law, and any other requests for general or specific relief, if not expressly granted herein are DENIED for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 1st day of November 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

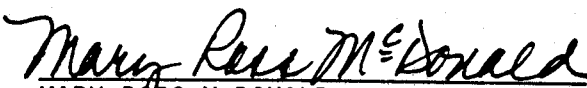
SIGNED:


MARTA GREY TOK

SIGNED:


JO CAMPBELL

ATTEST:


MARY ROSS McDONALD
SECRETARY OF THE COMMISSION

nsh

APPLICATION OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC. TO REDUCE
RATES FOR AT&T PRO WATS TEXAS
SERVICE

§
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§

DOCKET NO. 8838

October 23, 1989

Commission approved rate reduction for AT&T optional discount pricing plan. The proposed rate reduction was unopposed. AT&T's request for waiver of the notice requirements of PURA Section 43(a) was granted.

- [1] PROCEDURE--NOTICE--NOTICE BY APPLICANT--WHEN REQUIRED
PURA Section 18(a) offers some recourse from the notice requirements of PURA Section 43(a), at the Commission's discretion, when the telecommunications service involved is competitive and when waiver or modification of those requirements would be in the public interest. (p. 794)

DOCKET NO. 8838

APPLICATION OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC. TO REDUCE
RATES FOR AT&T PRO WATS TEXAS
SERVICE

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PUBLIC UTILITY COMMISSION
OF TEXAS

EXAMINER'S REPORT

I. Procedural History

AT&T Communications of the Southwest, Inc. (AT&T) filed this application to reduce its rates for PRO WATS Texas Service on May 25, 1989. Originally approved on June 26, 1987, as Pro Texas, PRO WATS is an optional discount pricing plan for direct-dialed long-distance calls. It is used primarily by small business customers. In this filing, AT&T proposes to reduce the monthly recurring charge for PRO WATS from \$15.00 to \$12.00 and to increase the applicable discount rate from 10 percent to 15 percent. AT&T estimates that those changes would reduce its annual revenues by approximately \$975,000 based on current usage volumes.

AT&T requested that the new reduced rates take effect July 1, 1989, and further requested that any requirement for publication of notice be waived. On June 8, 1989, Judge Amalija J. Hodgins suspended the operation of the proposed rates until November 28, 1989, scheduled a prehearing conference for June 26, 1989, and apprised AT&T and all other interested parties that the issue of notice would be discussed and decided at that conference. Before the conference was held, the docket was reassigned to the undersigned ALJ due to Judge Hodgins' commitment to the Gulf States Utilities Company rate case, Docket No. 8702.

On June 20, 1989, AT&T filed a Motion for Waiver of Rate Filing Package, for Waiver of Notice, and for Immediate Effectiveness of Proposed Rate Reduction. That motion set forth AT&T's reasons for waiver of a rate filing package and explained the legal and policy rationales for its request for waiver of public notice. It also reiterated AT&T's request that the rates take effect July 1, 1989.

Representatives of AT&T and the Commission's General Counsel appeared at the June 26th prehearing conference. At the conference, the ALJ granted MCI Telecommunications Corporation's (MCI's) motion to intervene, which had been filed on June 19, and granted AT&T's request for waiver of the rate filing package. Relying upon the Commission's decision in an interim appeal in *Application of AT&T Communications of the Southwest, Inc. to Reduce Rates of Its 1.544 MBPS Digital Services Tariff*, Docket No. 7027, 12 P.U.C. BULL. 1629 (order on appeal signed November 14, 1986), the ALJ partially granted AT&T's request for waiver of the publication-of-notice requirements set out in Section 43(a) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1989). The ALJ required AT&T to mail notice of the application to all current PRO WATS customers and to publish notice of the application two times in both *Telephony* and *Communications Week*. The ALJ also approved AT&T's requested rate reduction on an interim basis, effective July 1, 1989. All the actions taken at the prehearing conference were agreed to by the parties. The decision on publication of notice is explained more fully in the Jurisdiction and Notice section of the Examiner's Report.

On August 18, 1989, Mr. John Costello of the Telephone Division filed a memorandum recommending approval of AT&T's application. That recommendation was endorsed by Assistant General Counsel Susan Hafeli and was served on all parties of record. The deadline for responses to that recommendation and for requests for hearing was August 25, 1989. No responses or requests for hearing were filed. Because no party objected to AT&T's application or requested a hearing, this docket has been processed informally pursuant to Section 13(e) of the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1989).

II. Jurisdiction and Notice

A. Jurisdiction

The Commission has jurisdiction over this application under PURA Sections 16, 18, and 37.

B. Waiver of Notice

[1] This application clearly contemplates a change in AT&T's rates for PRO WATS service. At first glance, therefore, it would appear that both AT&T and the Commission are inextricably bound by the notice requirements of PURA Section 43(a) and its attendant, P.U.C. PROC. R. 21.22(b). In this case, those requirements would include the publication of notice once each week for four consecutive weeks in newspapers throughout the state and notification of every municipality in the state. In Docket No. 7027, however, the Commission found that PURA Section 18(a) offers some recourse from those notice requirements when the telecommunications service involved is competitive and when waiver or modification of those requirements would be in the public interest.¹ Copies of the order on appeal and the Commissioners' comments in Docket No. 7027 are appended to this report as Attachment A.

PRO WATS has been found to be a competitive service. *Application of AT&T Communications of the Southwest, Inc. to Introduce the Pro Texas Optional Calling Plan*, Docket No. 7194, 12 P.U.C. BULL. 1783, 1802-03, 1816, 1827 (June

¹ PURA Section 18(a) states,

It is the policy of this state to protect the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair, and reasonable rates. The legislature finds that the telecommunications industry through technical advancements, federal judicial and administrative actions, and the formulation of new telecommunications enterprises has become and will continue to be in many and growing areas a competitive industry which does not lend itself to traditional public utility regulatory rules, policies, and principles; and that therefore, the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace. It is the purpose of this section to grant to the commission the authority and the power under this Act to carry out the public policy herein stated.

26, 1987). AT&T advanced convincing arguments as to why modification of the usual notice requirements would be in the public interest. As AT&T pointed out, its proposal contemplates a rate reduction for all affected customers. The cost of publishing notice statewide and notifying all affected municipalities would be approximately \$142,000. In this instance, such notice would not necessarily be particularly effective, as AT&T offered and was ordered to notify each of its 5,275 PRO WATS customers directly. The notice actually provided in this case--direct notification plus two weeks' publication in *Telephony* and *Communications Week*--is identical to that found adequate and ordered by the Commission in Docket No. 7027.

III. Discussion and Recommendation

In his memorandum, Senior Rate Analyst John Costello stated that approval of AT&T's rate reduction proposal would make PRO WATS more attractive to small business users. Presently PRO WATS incorporates a \$15.00 monthly flat rate with a 10 percent discount on MTS usage charges. Under those rates, the break-even point for PRO WATS subscription is \$150.00. In other words, customers with more than \$150.00 per month of intrastate, interLATA, direct long-distance billing would benefit from using PRO WATS. AT&T proposes to lower the monthly flat fee to \$12.00 and to increase the discount to 15 percent. Under the proposed new rates, the break-even point would be \$80.00. The present and proposed rate structures are as follows:

<u>Description of Rate Element</u>	<u>Present Charge</u>	<u>Proposed Charge</u>
Initial Sign-Up Fee	\$ 6.00	\$ 6.00
Monthly Flat Rate	15.00	12.00
Usage Sensitive Charges	MTS	MTS
Discount on MTS Usage Charges	10%	15%

Mr. Costello's memorandum is appended to this report as Attachment B. In that memorandum Mr. Costello provides examples of the effective discount a customer would receive from standard MTS charges under the current and the proposed PRO WATS rates. Under the current rates, a customer with \$100.00 of MTS billing would pay five percent more by subscribing to PRO WATS. Under the

proposed rates the same customer would save three percent by subscribing to PRO WATS. The discounts for that and other selected MTS billing levels under the two rate schedules are set forth below:

<u>Standard MTS Billing Amount</u>	<u>Discount Under Current Rates</u>	<u>Discount Under Proposed Rates</u>
\$100.00	(5.00)%	3.00%
\$175.00	1.42%	8.14%
\$250.00	4.00%	8.98%

Mr. Costello agreed with AT&T's calculation that, based on current usage volumes, its proposed changes to the PRO WATS rate structure would reduce its annual revenues by approximately \$975,000. Mr. Costello also considered the issue of whether the new, lower rates would continue to enable PRO WATS to provide a reasonable contribution to the Company's general overhead. AT&T submitted, under seal, a marginal cost analysis which indicates that PRO WATS revenues will continue to significantly exceed costs under the proposed rate and that PRO WATS therefore will continue to provide a reasonable contribution. Mr. Costello examined that information and found it persuasive.

AT&T considers the sealed information to contain highly sensitive trade secrets which would be of benefit to competitors. The proprietary nature of the material was not challenged by any party and therefore has not been ruled upon by the ALJ. The ALJ has reviewed the material in making his recommendation in this case.

Based upon the information supplied by AT&T, including the information filed under seal, and the analysis submitted by Mr. Costello, the ALJ finds that AT&T's application to reduce its rates for PRO WATS Texas service is in the public interest and should be approved.

IV. Findings of Fact and Conclusions of Law

The ALJ recommends that the Commission adopt the following findings of fact and conclusions of law:

A. Findings of Fact

1. AT&T filed this application to reduce its rates for PRO WATS Texas Service on May 25, 1989.
2. AT&T requested that the new proposed rates take effect July 1, 1989.
3. The operation of the proposed rate schedules was suspended until November 28, 1989, or superseding order.
4. MCI's motion to intervene in this docket was granted in a written order dated June 30, 1989.
5. Originally approved on June 26, 1987, as Pro Texas, PRO WATS is an optional discount pricing plan for direct-dialed long-distance calls.
6. PRO WATS is used primarily by small business customers.
7. AT&T proposes to reduce the monthly recurring charge for PRO WATS from \$15.00 to \$10.00 and to increase the applicable discount rate from 10 percent to 15 percent.
8. AT&T's proposed rate reduction was approved on an interim basis effective July 1, 1989.
9. The ALJ did not require AT&T to file a rate filing package in support of this application.

10. AT&T mailed notice of the application to all current PRO WATS customers and published notice two times in both *Telephony* and *Communications Week*.
11. The decisions and actions described in Findings of Fact Nos. 8-10 were taken without objection from any party.
12. PRO WATS is a competitive service.
13. The cost of publishing notice statewide and of notifying all affected municipalities would be approximately \$142,000.
14. The type of public notice described in Finding of Fact No. 15 would not be a particularly effective method of notifying affected customers or other potentially interested parties of the proposed rate decrease.
15. The notice provided in this case is identical to that provided in Docket No. 7027.
16. Modification of the usual rate-change notice requirements in this case is in the public interest.
17. On August 18, 1989, Mr. John Costello of the Commission's Telephon Division recommended approval of AT&T's application. Mr. Costello's recommendation was endorsed by Assistant General Counsel Susan Hafeli.
18. No party responded to Mr. Costello's recommendation or requested a hearing in this case.
19. Approval of AT&T's rate reduction proposal would make PRO WATS more attractive to small business users.
20. Under the old rates, the break-even point for PRO WATS subscription is \$150.00. Under the proposed rates, the break-even point would be \$80.00.

21. The effective discounts under the current and the proposed PRO WATS rates for selected MTS billing levels are set forth below:

<u>Standard MTS Billing Amount</u>	<u>Discount Under Current Rates</u>	<u>Discount Under Proposed Rates</u>
\$100.00	(5.00)%	3.00%
\$175.00	1.42%	8.14%
\$250.00	4.00%	8.98%

22. Based on current usage volumes, the changes to the PRO WATS rate structure would reduce AT&T's annual revenues by approximately \$975,000.

23. Under the proposed lower rates, PRO WATS would continue to provide a reasonable level of contribution.

24. AT&T's application to reduce its rates for PRO WATS Texas Service is in the public interest.

B. Conclusions of Law

1. The Commission has jurisdiction over this application under PURA Sections 16, 18, and 37.

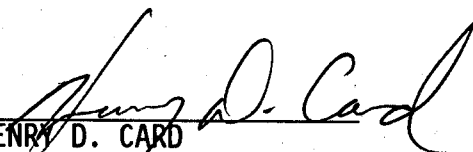
2. APTRA Section 13(e) allows the informal processing of this docket.

3. PURA Section 18(a) offers some recourse from the notice requirements set forth in PURA Section 43(a) when the telecommunications service involved is competitive and when waiver of modification of those requirements would be in the public interest. *Application of AT&T Communications of the Southwest, Inc. to Reduce Rates of Its 1.544 MBPS Digital Services Tariff*, Docket No. 7027, 12 P.U.C. BULL. 1629 (order on appeal signed November 14, 1986).

4. Modification of the notice requirements set forth in PURA Section 43(a) was appropriate in this case under the standards established in Docket No. 7027.

5. AT&T's application to reduce its rates for PRO WATS Texas service should be approved pursuant to PURA Sections 16, 18, and 37.

Respectfully submitted,


HENRY D. CARD
ADMINISTRATIVE LAW JUDGE

APPROVED on the 26th day of September, 1989.


MARY ROSS MCDONALD
DIRECTOR OF HEARINGS

DOCKET NO. 7027

APPLICATION OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC. TO REDUCE
RATES OF ITS 1.544 MBPS DIGITAL
SERVICES TARIFF.

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

On October 6, 1986, AT&T Communications of the Southwest, Inc. (AT&T) filed an appeal from an examiner's order in this case signed on September 26, 1986. AT&T sought a modification of the order in three respects: (1) that a hearing be held before it publishes notice, (2) that the required notice be modified, and (3) that its tariff filing be made effective immediately. On October 9, 1986, the Commission indefinitely extended the time for acting on AT&T's appeal.

For the reasons stated in open meeting on November 7, 1986, AT&T's requests that the proposed tariff be made immediately effective and that the hearing be rescheduled are DENIED. AT&T's request that a modified notice be allowed is GRANTED. Accordingly, it will be sufficient notice of the proposed tariff changes in this case for AT&T (1) to give direct notice by mail or hand delivery to the six customers directly affected by the proposed changes and (2) to publish notice in two consecutive issues each of Communications Week and Telephony.

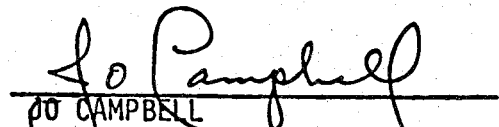
SIGNED AT AUSTIN, TEXAS on this the 14th day of November 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED:


DENNIS L. THOMAS

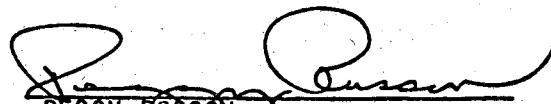
SIGNED:


JO CAMPBELL

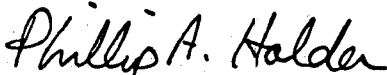
-continued-

I respectfully dissent from the above order insofar as it grants AT&T's request for modified notice. Although AT&T argued that the high speed data digital service at issue is competitive and hence, Section 18(a) of the Public Utility Regulatory Act (Tex. Rev. Civ. Stat. Ann. art. 1446c) would allow the notice requirements of Section 43(a) to be waived, I disagree. As General Counsel noted, AT&T has only alleged competition. It has not proved that competition exists, and Section 18(a) should not in that instance override Section 43(a) of the Act. Section 43(a) provides that "No utility may make changes in its rates except" by following the provisions of Section 43(a). There is no dispute in this docket that AT&T is a regulated utility. There is no dispute in this docket that rates are being changed. Section 43(a) is clear and unambiguous. A utility is prohibited from changing its rates except by following Section 43(a). While Section 18(a) grants discretion to the Commission, it does not imply an intent by the Legislature to allow the Commission to override other sections of the Public Utility Regulatory Act. The Legislature has prescribed the nature of notice which a utility must issue, the Commission may not prescribe less. The Examiner's Order should have been upheld by the Commission.

SIGNED:


PEGGY ROSSON

ATTEST:


PHILLIP A. HOLDER
SECRETARY OF THE COMMISSION

1s

1 COMMISSIONER THOMAS: Right.

2 CHAIRMAN ROSSON: Do you feel like talking
3 about it?

4

5 APPLICATION OF AT&T COMMUNICATIONS)
6 OF THE SOUTHWEST TO REDUCE RATES OF) DOCKET NO. 7027
7 ITS 1.544 MBPS DIGITAL SERVICES TARIFF)

7

8 COMMISSIONER THOMAS: I think we have
9 requests for oral argument, don't we?

10 CHAIRMAN ROSSON: Could we deny that
11 request?

12 (Laughter)

13 I think the parties have set out everything they
14 could hope to set out in this decision.

15 COMMISSIONER THOMAS: That would be fine
16 with me, to deny it.

17 CHAIRMAN ROSSON: It's certainly within the
18 discretion of the Commission to deny it, and I would assume
19 that it would be agreeable with the parties, given the
20 lateness of the hour and the temper of the Commission.

21 COMMISSIONER THOMAS: All right. This
22 concerns Docket No. 7027 which is the Application of AT&T
23 Communications of the Southwest to Reduce Rates of its
24 1.544 Megabits Per Second Digital Services Tariff.

25 Essentially what this is, is AT&T wants to reduce

KENNEDY

1 its rates of an average about 40 percent for this high
2 speed, high volume private line service which currently has
3 six customers statewide; potential market consists of large
4 businesses or government customers; service is highly
5 competitive; AT&T forecasts that 65 customers may
6 eventually request the service.

7 AT&T claims that the Examiner's ruling requiring
8 full notice would cost \$80,000 for newspaper publication
9 and that mailing to 3,500 municipalities will add an
10 additional \$12,000. Instead they propose to send notice
11 directly to their six current customers and to have
12 newspaper publication in two successive issues of
13 Communications Week and Telephony, which would cost about
14 \$6,000.

15 AT&T would also like to make the reduction
16 effective immediately, in order to save customers 40
17 percent, and they use as their justification Section 18(a)
18 of PURA.

19 Those opposing this claim that this is a move
20 which is anti-competitive and deserves a full hearing,
21 should not be put into effect. In the meantime, General
22 Counsel recommends that the Examiner's Order be sustained.
23 And AT&T has not shown their basic assumption that the
24 service is competitive, that Section 18(a) should not
25 override Section 43(a), and we should be especially wary of

KENNEDY

1 overriding notice provision, Section 43(a).

2 And that General Counsel is skeptical as to
3 whether or not good-cause exception exists for granting of
4 interim rates.

5 This is one of those very sticky questions in
6 which we deny lower rates immediately to customers in order
7 to make sure that we don't go too far the other way and do
8 something which is anti-competitive.

9 I guess my feeling, after reading the pleadings,
10 there is not a good answer in this case. But I tend to
11 agree with the General Counsel that the Examiner's Order
12 should be sustained.

13 CHAIRMAN ROSSON: Discussion?

14 COMMISSIONER CAMPBELL: Even as to the
15 notice requirements? We're going to make the Company spend
16 all of that money when there are only 65 people out there
17 that will be affected.

18 COMMISSIONER THOMAS: Well, I would be happy
19 to hear any thoughts you have.

20 COMMISSIONER CAMPBELL: That's the question
21 I'm asking. It just seems to me -- you know, my continuing
22 concern around here is this unbelievable regulatory burden
23 we put on all of the people of the State of Texas and, you
24 know, General Counsel's bit that, "Well, there is no
25 showing that this may not be subsidizing -- you know, the

KENNEDY

1 other ratepayers might not be subsidizing this lower rate,"
2 that's a bogus argument because you consider that in a rate
3 case.

4 But as far as making all of this kind of money
5 that somebody is going to pay for later on, I think that's
6 a regulatory burden that that kind of expense just -- I
7 don't think I find it fiscally responsible.

8 COMMISSIONER THOMAS: Why do I feel that our
9 positions have been reversed? What happened to "It's the
10 law"?

11 (Laughter)

12 COMMISSIONER CAMPBELL: Because I think the
13 law allows you to get good-cause exceptions on these
14 things.

15 CHAIRMAN ROSSON: I concur with the Examiner
16 and with General Counsel's position; and therefore, I guess
17 with Commissioner Thomas' recommendation that the Examiner
18 be upheld.

19 COMMISSIONER THOMAS: Let's consider just a
20 second publication.

21 I don't feel --

22 COMMISSIONER CAMPBELL: The other thing that
23 bothers me about this is, we're talking about AT&T and
24 they're the regulated entity. And so every time AT&T wants
25 to protect any kind of customer base, you know, we can hang

KENNEDY

1 them up in a long drawn-out proceeding out here, and all it
2 takes is one of their competitors running out here and
3 filing an intervention. And, you know, I think there are
4 some equity balances.

5 And, you know, as far as granting them interim
6 relief to allow these rates to go into effect immediately,
7 I think it has a positive impact on the economy. And
8 secondly, you know, I can't believe that that kind of harm
9 is going to ultimately not be able to be corrected because
10 I can't believe that it's going to take that long to hear
11 this case and people get on with it.

12 But I think the other balancing act that we need
13 to consider, under 18, is the fact that we've got a company
14 operating in a highly competitive market, for a highly
15 competitive service, and to allow them to be disadvantaged
16 in a competitive market because their competitors can come
17 in and allow a long drawn-out rate proceeding seems to me
18 to be counterproductive to what the Legislature intended.

19 CHAIRMAN ROSSON: Well, I guess if it were
20 only a competitor saying this, I might be more or possibly
21 less concerned. But it's also the General Counsel of this
22 Commission saying that.

23 COMMISSIONER CAMPBELL: Well, I was not
24 impressed with General Counsel's arguments. As I said, I
25 think the argument that General Counsel makes that maybe

KENNEDY

1 somebody else may be subsidizing this is a bogus argument.

2 CHAIRMAN ROSSON: I don't think that's the
3 only argument General Counsel makes. General Counsel makes
4 some arguments concerning whether 18(a) should be
5 considered as overriding 43, what have you.

6 COMMISSIONER CAMPBELL: I just wasn't
7 impressed.

8 CHAIRMAN ROSSON: The other argument is that
9 AT&T hasn't shown the service is competitive. And I'm not
10 sure we know how many people are out there for sure who
11 would be interested in this.

12 So again, I would support Commissioner Thomas'
13 original proposal unless Commissioner Thomas is changing
14 his original --

15 COMMISSIONER THOMAS: Commissioner Thomas is
16 waffling on your terms of the notice.

17 CHAIRMAN ROSSON: Well, good.

18 COMMISSIONER THOMAS: This may be one
19 that -- and I guess I would appreciate a couple of comments
20 from Mr. Pope on the notice, since it was his argument that
21 I initially was convinced by.

22
23
24
25
KENNEDY

COMMENTS ON BEHALF OF THE COMMISSION STAFF

1
2
3 MR. POPE: I think my fundamental point,
4 Commissioner, is, as Commissioner Rosson has indicated,
5 it's been my concern all along in half a dozen dockets that
6 18(a) does not go so far as to allow this Commission to
7 override specific legislative commands. I read 43(a) as
8 the specific legislative command that this Commission
9 shall -- "that no utility shall change its rates except by
10 publishing that notice and except by sending that notice to
11 those municipalities."

12 And whether or not we agree that it's cost
13 effective or anything else, it's a policy decision that was
14 made by the Legislature.

15 I have read the legislative debates on the notice
16 question. It is clear in my mind that they were intending
17 to take the discretion away from the Commission and make it
18 mandatory that that notice is published.

19 I can't find any what I call wiggle room when I
20 look to 18(a). 18(a) gives us a lot of discretion but I
21 don't think it allows us to override a specific and direct
22 legislative command.

23 COMMISSIONER CAMPBELL: Where do we get the
24 ability to do it in other dockets for good cause shown,
25 like on certifications and things like that?

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1 MR. POPE: Certifications --

2 COMMISSIONER CAMPBELL: That's under a whole
3 different standard?

4 MR. POPE: Yes, ma'am, that's not a 43(a)
5 standard.

6 COMMISSIONER CAMPBELL: Well --

7 MR. POPE: It's a separate notice
8 requirement which is, you know, given to this Commission's
9 discretion. I don't think we have any discretion in 43(a).
10 I wish we did.

11 COMMISSIONER CAMPBELL: I think you can look
12 at the intent, though, of the notice requirements in 43(a)
13 and certainly the intent, it seems to me, was so that those
14 people who are going to be affected by it would have notice
15 so that they can complain. And here when it's not the
16 general public that's going to be affected by something but
17 a limited class of customers, I just think 18(a) gives you
18 the ability to override that.

19 MR. POPE: My concern with that,
20 Commissioner, as I've expressed, is that notice is
21 jurisdictional, you know. And I fear that one of the
22 competitors go in, say, "We never had jurisdiction because
23 AT&T did not follow 43(a)," get it remanded and have it
24 sent back to us. And it is my evaluation that the legal
25 argument that says 18(a) can override 43(a) is not

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1 sufficiently strong for this Commission to proceed on.

2 MR. DAVIS: If I promise to be brief, could
3 I respond?

4 CHAIRMAN ROSSON: You'll have to talk to
5 Commissioner Thomas.

6 COMMISSIONER THOMAS: I would love it.

7

8 COMMENTS ON BEHALF OF AT&T COMMUNICATIONS

9

10 MR. DAVIS: I just want to say that the
11 Commission rejected General Counsel's arguments in Docket
12 6013 and the Hearing Examiner rejected General Counsel's
13 interpretation in Docket 6264, expressly rejected on
14 Page 41 of that Order.

15 COMMISSIONER THOMAS: What were those
16 dockets? I don't remember them.

17 MR. DAVIS: 6013 was the initial rules
18 proceeding before the Commission; 6264 was the market
19 definition proceeding out of which -- I'm not sure there
20 was ever really a Commission Order but there was a --

21 COMMISSIONER THOMAS: Those were not rate
22 proceedings, were they?

23 MR. DAVIS: -- clearly an Examiner's Order.

24 No, but they were proceedings that interpreted
25 whether 18(a) granted the Commission authority to overrule

KENNEDY

1 the provisions of the other PURA Sections 27 through 68.
2 And the exact same arguments were made; particularly in
3 Docket 6264 and on Page 41, the Examiner, through some
4 analysis, rejects the exact same argument General Counsel
5 is making here today.

6 In addition --

7 CHAIRMAN ROSSON: It didn't address the same
8 fact situation.

9 MR. DAVIS: No. It wasn't the same fact but
10 it was --

11 COMMISSIONER CAMPBELL: It was the same
12 legal issue.

13 MR. DAVIS: It was the legal issue as to
14 whether 18(a) granted the Commission authority to override
15 the other PURA provisions. And the argument at that time
16 is the same that we're making in this case, is that if it
17 doesn't grant that authority, it's meaningless because the
18 Commission has always had wiggle room; it's always had
19 discretion to the extent the statute allowed.

20 The Commission can interpret the statute to the
21 full extent of its discretion. And since 18(a) was enacted
22 after the other PURA sections were in effect, one has to
23 assume that the Legislature intended to do something with
24 it. It must have intended to mean something. And it means
25 nothing if all it does is say, "The Commission, you have

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1 some discretion" because you already had that.

2 COMMISSIONER THOMAS: How do you respond to
3 Mr. Pope's last point that whatever we do would be
4 vulnerable for reversal or remand based upon improper
5 notice?

6 MR. DAVIS: Your Honor, I think you always
7 have the issue of, however you rule, someone is going to
8 have grounds -- someone is going to seek remand. My
9 interpretation, the interpretation of the Commission in
10 6013 and the interpretation of the Examiner in 6264 was
11 that 18(a) does give you this discretion. Clearly someone
12 can argue that. But I guess it's our proceeding and maybe
13 we're the one that is at risk as much as anyone else.

14 COMMISSIONER THOMAS: You would rather save
15 the \$80,000 than take the risk?

16 MR. DAVIS: I think it's a very important
17 principle for the Commission to consider. We've got rules
18 proceedings coming up, and it's going to be, I think,
19 important to the Commission whether 18(a) gives it
20 discretion to grant more flexible types of regulations.

21 COMMISSIONER THOMAS: Which is more
22 important to you then, saving the money or making the
23 point? I mean, just what is it that you're after here? Is
24 it to show 18(a) gives -- you know, one more example of the
25 Commission -- 18(a) gives flexibility or is it really to

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1 save the money?

2 MR. DAVIS: In this case, the purpose is to
3 try to handle this case in a reasonable manner. We're
4 trying to lower rates and we're trying to do it for a
5 service that nets a million two annual revenues today. And
6 so we're talking about spending \$100,000 to give notice on
7 service that nets a million two. And it just doesn't make
8 sense. That's the point. And I'm not trying to make
9 further inroads or whatever with regard to 18(a). So far,
10 I don't think there has really been an inroad on 18(a). I
11 don't think we have ever really used 18(a) previously. I
12 think the Examiner recommended that it be used in 6264 but
13 I don't think anything ever happened.

14 I'm just saying if we looked at it common sense,
15 I hope we would say it's a rate reduction and it's for six
16 customers. I could fly them all in for the hearing for
17 less money than --

18 CHAIRMAN ROSSON: Some of your customers are
19 going to have a rate increase, are they not?

20 MR. DAVIS: Pardon me?

21 CHAIRMAN ROSSON: Aren't some of them going
22 to have a rate increase?

23 MR. DAVIS: No, none of the customers will
24 have a rate increase.

25 CHAIRMAN ROSSON: What is the General

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1 Counsel talking about, a rate increase?

2 MR. DAVIS: There is a potential that some
3 customer somewhere could structure a service in some manner
4 that would cause that customer to pay more than under the
5 old rates. And it has to do with the length of access,
6 basically. So it is possible that some customers somewhere
7 could be paying more under the new rates, but that customer
8 doesn't exist and it's very difficult to construct a
9 service that would cause them to have an
10 increase.

11 The customers that we have today will experience
12 reductions from 31 to 45 percent, I believe.

13 CHAIRMAN ROSSON: But the actual fact of the
14 matter is, is that the action you're seeking is also a rate
15 increase, just to decrease -- it's an increase.

16 MR. DAVIS: Well --

17 CHAIRMAN ROSSON: -- or has the potential
18 for being an increase just like any rate case has the
19 potential for being an increase, maybe.

20 MR. DAVIS: I guess I would disagree because
21 the customer wouldn't have an increase in rates because
22 he's not paying -- if that customer exists and came in and
23 ordered the service, he is not having an increase; he's
24 having a new rate, maybe. But he's not seeing anything go
25 up.

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1 CHAIRMAN ROSSON: Your rates are also going
2 to go up; your charges for some things will go up. Not all
3 charges will go down -- is that right? -- having to do with
4 length?

5 MR. DAVIS: I would have to get one of my
6 experts on the service up here to actually explain.

7 CHAIRMAN ROSSON: Is that right?

8 MR. POPE: Yes, ma'am.

9 COMMISSIONER CAMPBELL: But not for any of
10 the present customers?

11 MR. POPE: It's my understanding that the
12 current configuration of the present customers, they would,
13 in fact, you know, taking AT&T at its word, probably suffer
14 but would have decreases.

15 However, the tariff rates for a number of
16 elements would increase or at least the proposal is that
17 they would increase. There are others which would
18 decrease. I think AT&T's contention is that it would be
19 offsetting.

20 It's my contention that there are definitely
21 increases; those increases need to be looked at and there
22 are -- the notice needs to go out to all potential
23 customers. And if we don't know who they are, they ought
24 to get to those.

25 I would also like a chance to have a tiny

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1 rebuttal to AT&T.

2 COMMISSIONER THOMAS: Is that all you have?

3 MR. DAVIS: I had a whole lot, Your Honor,
4 but that's all I thought I had time for. If there are any
5 more questions, I would be happy to answer them.

6 COMMISSIONER THOMAS: As long as we're at
7 it.

MR. KING: If I promise to be very brief --

8 COMMISSIONER THOMAS: Yes, sir.

9

10 COMMENTS ON BEHALF OF MCI TELECOMMUNICATIONS

11

12 MR. KING: I'm Allen King representing MCI
13 and, if you don't mind, I'll just speak to you from here.

14 Surprisingly enough, on the issue of notice, MCI
15 has no objection and believes that 18(a), in fact, may give
16 you enough wiggle room to allow for a different type of
17 notice.

18 On the issue, though, that we're concerned
19 with -- and that is the immediate implementation of a
20 40 percent decrease on a competitive service -- we think
21 that you really pushed the limits of error if you were to
22 do that without a hearing.

23 This hearing is set for July -- I'm sorry --
24 January the 13th, not July -- January the 13th. MCI has
25 agreed to this expedited schedule. We have agreed to an

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1 expedited discovery schedule. We will abide by it. We
2 have absolutely no intention of hindering this hearing in
3 any way and think that we can resolve the hearing in a
4 short period.

5 So I would strongly urge you not to allow the
6 immediate implementation, even though a decrease is always
7 something the Commission is interested in. I know that.

8 But the potential for predatory pricing or any
9 competitive pricing is there and we just don't know and MCI
10 doesn't know at this point whether it's real or not.

11 Thank you.

12 CHAIRMAN ROSSON: Mr. Pope?

13
14 CLOSING COMMENTS ON BEHALF OF
15 THE COMMISSION STAFF

16
17 MR. POPE: Thank you. Very briefly a couple
18 of quick points.

19 In 6013, AT&T and I have been disagreeing for
20 about the last three dockets as to who won that particular
21 one. I would call it a draw. It was my understanding that
22 their legal theory was also disapproved by the Commission
23 and I read it as more of an endorsement of mine than they
24 did.

25 Similarly, with 6264, this Commission took no

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1 position on the Examiner's Report. The Examiner never
2 addressed the issues that I raised.

3 Finally, my concern is, much as AT&T is, about
4 the point that this case makes. I think AT&T has chosen,
5 deliberately perhaps, the most sympathetic, most appealing
6 set of facts that they have in their arsenal to present to
7 you in an effort to finally get to the point where this
8 Commission decides that 18(a) does override those sections
9 of PURA.

10 And I am concerned because I don't think that --
11 you know, I'm personally convinced that that is a high risk
12 interpretation of the law which, if you make in this case
13 you're going to be hearing about in every case brought by
14 AT&T since then. If you can override 43(a), which is a
15 clear, specific direct mandate, then you can, in fact,
16 probably override everything else in PURA and I don't think
17 that that was the legislative intent. I think AT&T is
18 inviting you into error.

19 COMMISSIONER CAMPBELL: Exactly what would
20 you say was the purpose of 18?

21 MR. POPE: Commissioner, the purpose of
22 18(a), as I understand it, was to give this Commission
23 enormous -- and it truly is -- enormous discretion in those
24 areas in which the Commission has been given any discretion
25 at all. But, for example, I made an argument in 6095, the

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1 AT&T rate case, that because of that discretion, this
2 Commission had a little bit more leeway in interpreting the
3 affiliated issue.

4 COMMISSIONER CAMPBELL: That meant we would
5 override the statute?

6 MR. POPE: No, ma'am; no, ma'am. I think it
7 gives you the ability to interpret the statute beyond what
8 even 16(a) would give you. I think it gives you the
9 ability to go beyond simply the basics of the situation.

10 What 18(a) was designed to do was give this
11 Commission the power to handle cases that the Legislature
12 could not anticipate. I think, for example, the 18(a) was
13 probably utilized in 5113, in which case you had an
14 emergency situation which had to be addressed quickly.

15 COMMISSIONER CAMPBELL: Obviously, 5113
16 overrode a lot of statutes, didn't it?

17 MR. POPE: Yes, ma'am, 5113 did. And I
18 think that 18(a) can, in fact, override statutes if you
19 have a direct, clear, specific conflict in which either
20 18(a) or the statute may stand, then you have to make the
21 choice or some other statutes. And in that case, I think
22 you can determine that 18(a) overrides.

23 But I think that the ordinary rules of statutory
24 construction are that if you have two statutes that you
25 attempt with all your efforts to reconcile them and make

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1 both of them stand and, in my interpretation, it is
2 possible to have both 43(a) and 18(a) stand together, you
3 can implement 43(a), you can implement those specific,
4 direct commands of the Legislature. But in any place that
5 the Legislature has given you any discretion at all, your
6 discretion is limited only by the Constitution and the
7 provisions of Section 18(a) itself.

8 COMMISSIONER THOMAS: I would modify my
9 recommendation to allow for the abbreviated notice but
10 to --

11 COMMISSIONER CAMPBELL: Go with the
12 expedited hearing?

13 COMMISSIONER THOMAS: Yes. Uphold the
14 Examiner on not going with interim relief, and we'll do it
15 with the expedited hearing.

16 COMMISSIONER CAMPBELL: Well, I will concur
17 with that. That is the second choice. I would have
18 preferred the other, but I can live with that.

19 CHAIRMAN ROSSON: I'll dissent. You had it
20 right the first time.

21 There are no unprotested cases on this agenda,
22 are there?

23 JUDGE HOLDER: There are none.

24 CHAIRMAN ROSSON: Okay.

25 For your information -- I don't think you were in

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ATTACHMENT B
Public Utility Commission of Texas

Memorandum

TO: Henry S. Card
Administrative Law Judge

FROM: Susan Hafeli SA
Assistant General Counsel

DATE: August 18, 1989

RE: Docket No. 8838 - Application of AT&T Communications of the Southwest, Inc. to reduce rates for AT&T PRO WATS

Attached is a memorandum from John A. Costello, Senior Rate Analyst--Telephone Division, recommending approval of the above referenced application. To date, no protests have been received regarding this application. The General Counsel's office concurs with the Staff in recommending approval of this application.

/ch
Attachment
cc: All Parties of Record

Public Utility Commission of Texas

Memorandum

TO: Susan Hafeli
FROM: J.A. Costello *gac*
DATE: August 18, 1989
SUBJECT: Docket No. 8838 - Application of AT&T Communications of the Southwest, Inc. to reduce rates for AT&T PRO WATS

The purpose of the memorandum is to submit staff's recommendation in this proceeding pursuant to Examiner's Order No. 2 dated June 26, 1989. An analysis of the rate and cost information submitted by AT&T for PRO WATS Service indicates that AT&T's proposal to reduce its monthly charges and increase its discount appears to be reasonable. As such, I recommend approval of the application as filed by AT&T.

Existing Service Structure

Originally introduced June 26, 1987 as "Pro Texas", PRO WATS is an optional calling plan for users of standard long distance message telecommunications service (MTS). It is a discounted long distance service originally targeted at medium and small business users. I believe that the proposal suggested by AT&T in this proceeding, will position the service to attract a greater number of small business users, while more of the medium size users will seek alternatives such as the AT&T Texas Business Plan service. That service is a discounted long distance WATS-like product that utilizes multi-jurisdictional WATS access lines in originating long distance calls.

Prior to the interim rate approval granted in this proceeding, PRO WATS offered customers a 10% discount on all intrastate, interLATA long distance direct-dialed calls for a monthly charge of \$15.00. This discount is applicable to all calls made during all hours of the day every day of the week, and equates to a break even point of \$150.00 on standard long distance service for any customer electing to subscribe to the service (\$15.00/.10). In other words, customers with more than \$150.00 per month of intrastate interLATA DDD (direct distance dialing) billing would benefit from the service.

Proposed Service Structure

AT&T proposes to decrease the monthly charge applicable to PRO WATS from \$15.00 to \$12.00, and to increase the discount from 10% to 15%. This change in charges brings the break even point down to \$80.00 (\$12.00/.15). As such, AT&T customers with \$80.00 or more of intrastate interLATA DDD billing per month would benefit from the service under the newly proposed structure. The present and proposed rate structure for the service are as follows:

<u>Description of Rate Element</u>	<u>Present Charge</u>	<u>Proposed Charge</u>
Initial Sign Up Fee	\$ 6.00	\$ 6.00
Monthly Flat Rate	15.00	12.00
Usage Sensitive Charges	MTS*	MTS*
Discount on MTS usage charges	10%	15%

*All usage sensitive charges for PRO WATS are obtained from AT&T's Message Telecommunications Service rate tables on file with the Commission, and would include all applicable time-of-day discounts.

Effect of Service on Various Calling Volumes

Schedule I attached to this memorandum provides examples demonstrating the effect of the service on various levels of monthly calling volumes that might be generated by a customer using the previous and proposed discount and "buy-in" fee. As the examples illustrate, the customer will experience a greater net effective discount as usage increases. However, should usage fall below the break-even point, the customer experiences a net increase in the cost of the service. (This, of course, is a customer choice, when the customer evaluates the service and its advantages and disadvantages.) The examples further illustrate the savings afforded PRO WATS customers under the proposed rate structure in comparison to the previous structure at varying levels of usage. The net effective discount, as a percentage, increases substantially for low volume users, while increasing moderately for higher volume users.

Revenue Impact

AT&T estimates that, based on current usage volumes, its proposed changes to the PRO WATS rate structure will reduce AT&T's annual revenues by approximately \$975,000. This change will effectively reduce PRO WATS charges for approximately 5,294 AT&T customers.

Effect on Contribution

Mr. David Featherston of the Telephone Division Staff submitted testimony in Docket No. 7194 (March, 1987), the original application for this service, projecting an average revenue per minute of use (ARPM) for PRO WATS in the range of \$.3196 to \$.3354. AT&T has submitted information with this application, under protective seal, indicating that the present ARPM for PRO WATS does, in fact, fall within this projected range. According to cost information submitted with this application, and updated to reflect current access charges, the proposed rate structure will continue to allow this service to provide a reasonable contribution to the Company's general overhead.

Recommendation

Based on my review of the application and materials submitted by AT&T, to revise the structure for its PRO WATS service, I recommend that the application be approved as filed. If you should have any questions or require additional information on this matter please do not hesitate to call me at 512-458-0175.

Schedule I

PRO WATS: Example of Charges

<u>Discount Procedure for \$100.00 of MTS Billing</u>	<u>Previous</u>	<u>Proposed</u>
Total of monthly billing for interLATA intrastate long distance charges	\$100.00	\$100.00
Less: applicable discount (10% or 15%)	<u>(10.00)</u>	<u>(15.00)</u>
Gross cost of long distance	90.00	85.00
Add: Monthly "buy-in" fee	<u>15.00</u>	<u>12.00</u>
Net cost of long distance	\$105.00	\$ 97.00
Effective Discount from Standard MTS charges	(5.00%)	3.00%
 <u>Discount Procedure for \$175.00 of MTS Billing</u>	 <u>Previous</u>	 <u>Proposed</u>
Total of monthly billing for interLATA intrastate long distance charges	\$175.00	\$175.00
Less: applicable discount (10% or 15%)	<u>(17.50)</u>	<u>(26.25)</u>
Gross cost of long distance	157.50	148.75
Add: Monthly "buy-in" fee	<u>15.00</u>	<u>12.00</u>
Net cost of long distance	\$172.50	\$160.75
Effective Discount from Standard MTS charges	1.42%	8.14%
 <u>Discount Procedure for \$250.00 of MTS Billing</u>	 <u>Previous</u>	 <u>Proposed</u>
Total of monthly billing for interLATA intrastate long distance charges	\$250.00	\$250.00
Less: applicable discount (10% or 15%)	<u>(25.00)</u>	<u>(37.50)</u>
Gross cost of long distance	225.00	212.50
Add: Monthly "buy-in" fee	<u>15.00</u>	<u>12.00</u>
Net cost of long distance	\$240.00	\$224.50
Effective Discount from Standard MTS charges	4.00%	8.98%

DOCKET NO. 8838

APPLICATION OF AT&T COMMUNICATIONS
OF THE SOUTHWEST, INC. TO REDUCE
RATES FOR AT&T PRO WATS TEXAS
SERVICE

§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

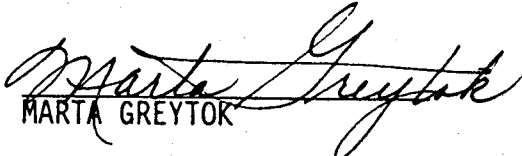
In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas considered the Examiner's Report submitted in the above-styled docket. The Commission finds that the above-styled application was processed in accordance with applicable statutes by an administrative law judge who prepared and filed a report containing findings of fact and conclusions of law, which Examiner's Report is adopted and incorporated by reference into this Order. The Commission further issues the following Order:

1. AT&T Communications of the Southwest, Inc.'s application to reduce rates for PRO WATS Texas Service is APPROVED.
2. All additional requests for relief not specifically granted herein are DENIED for lack of merit.

SIGNED AT AUSTIN, TEXAS on this the 23rd day of October, 1989

PUBLIC UTILITY COMMISSION OF TEXAS


SIGNED:


MARTA GREYTOR

SIGNED:


JO CAMPBELL

ATTEST:


MARY ROSS MCDONALD
SECRETARY OF THE COMMISSION

APPLICATION OF HOUSTON COUNTY
ELECTRIC COOPERATIVE, INC.
FOR AUTHORITY TO CHANGE RATES

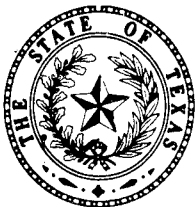
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DOCKET NO. 8625

August 30, 1989

Applicant's request for a rate increase was granted. A management audit and reporting procedures were required as part of the final order.

- [1] CERTIFICATION--OBLIGATIONS UNDER CERTIFICATE--QUALITY OF SERVICE
The cooperative was ordered to report to the Operations Review Division of the Commission its progress in relieving its financial situation and in making system-wide improvements to prevent the frequent outages that had been occurring. (p. 832)
- [2] Due to the extremely poor financial condition of the cooperative, the Commission directed staff and general counsel to conduct an investigation and review of the cooperative's management pursuant to PURA §29(a). (pp. 842, 863)



Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N

Austin, Texas 78757 · 512/458-0100

Marta Greytok
Chairman

Jo Campbell
Commissioner

Bill Cassin
Commissioner

July 3, 1989

TO: All Parties of Record

RE: Docket No. 8625 -- Application of Houston County Electric Cooperative, Inc., for Authority to Change Rates

Dear Madam or Sir:

Enclosed please find a copy of my Examiner's Report and Proposed Order in this docket. The Commission will consider this case at an open meeting scheduled to begin at 10:00 a.m. on Thursday, July 20, 1989, at its offices at 7800 Shoal Creek Boulevard, Austin, Texas. You are welcome to attend the meeting but are not required to do so. A copy of the Final Order will be sent to you shortly thereafter.

Exceptions, if any, to the Examiner's Report must be filed in writing no later than 4:00 p.m. on Tuesday, July 10, 1989. Replies to exceptions must be filed in writing no later than 4:00 p.m. on Friday, July 14, 1989. An original and ten copies of all such pleadings must be filed with the Commission filing clerk. Also, a copy must be served upon each party of record and the Commission general counsel.

Requests for oral argument must be filed with the Commission and served on all parties by 4:00 p.m. on Friday, July 14, 1989. If oral argument is requested, parties may call Lisa Ruedas at (512) 458-0266 after 9:00 a.m. the day before the final order meeting to learn if oral argument will be allowed by the Commissioners. If oral argument is granted, the Commissioners may delay their decision until the day following the open meeting. Even if oral argument is not allowed, the Commissioners may ask questions of any parties present, the staff, and the examiner.

Summary of the Examiner's Report

The statutory deadline in this case is July 24, 1989. Houston County Electric Cooperative filed a statement of intent to increase its rates \$2,055,212, or 14.8% over its adjusted test year revenues and \$2,301,216, or 16.8% over its actual test year revenues. There were two intervenors who protested the application. The examiner recommends a total revenue increase of \$1,974,591, which represents a \$2,745,300 base revenue increase over adjusted test year base revenue less reconcilable purchased power expense of \$770,709. This increase is less than the \$2,055,212 revenue increase that Houston County requested. The examiner also recommends that the cooperative be required to report to the Commission concerning improvements to its quality of service.

Sincerely,

Michelle E. Dains

Michelle E. Dains
Hearings Examiner

DOCKET NO. 8625

APPLICATION OF HOUSTON COUNTY
ELECTRIC COOPERATIVE, INC. FOR
AUTHORITY TO CHANGE RATES

§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

EXAMINER'S REPORT

I. Procedural History

On January 20, 1989, Houston County Electric Cooperative, Inc. (Houston County or the cooperative) filed a statement of intent to increase its rates \$2,055,212, or 14.8% over its adjusted test year and \$2,301,216 or 16.8% over its actual test year. Houston County's proposed rate change is based on a test year ending June 30, 1988. All classes of customers will be affected.

Houston County published notice of the proposed rate increase once each week for four (4) consecutive weeks in a newspaper of general circulation in each county containing service territory affected by the proposed change. In addition the cooperative filed rate filing packages with the cities of Kennard and Latexo, which they also serve.

By order entered February 6, 1989, implementation of the rates was suspended for 150 days beyond the otherwise effective date of February 24, 1989 to July 24, 1989 pursuant to Section 43(d) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446(c) (Vernon Supp. 1989).

A prehearing conference was held on February 15, 1989. Appearances were made by Mr. Mark Davis on behalf of the cooperative and Mr. Walter Muse, assistant general counsel, for the Commission staff and the public interest. A prehearing schedule and hearing date were established.

On April 6, 1989, Oliver Bass Lumber Co., Inc. (Oliver Bass) and the Houston County Ratepayers Coalition (HCRC) were granted party status to this proceeding. In the examiner's order granting the requests to intervene, the examiner informed the intervenors that any intervenor direct testimony would be due by April 14, 1989. In examiner's order no. 4, the examiner overruled the cooperative's objection to the intervention of HCRC and specifically stated that the procedural schedule in this docket would not be disturbed.

The hearing on the merits was held on April 28, 1989, and lasted through May 1, 1989. Appearances were made by Mr. Fernando Rodriguez and Mr. Davis on behalf of the cooperative, Mr. Muse on behalf of the Commission's general counsel, Mr. Jim Turner on behalf of Oliver Bass, and Mr. Stephen Evans on behalf of HCRC. Several protest statements from Houston County customers were taken at the hearing.

HCRC filed a brief on May 17, 1989. The cooperative, Oliver Bass and general counsel filed briefs on May 19, 1989. The cooperative and general counsel filed reply briefs on May 26, 1989.

II. Jurisdiction

Houston County distributes, sells, and furnishes electricity and as such is a public utility as the term is defined in Section 3(c)(1) of PURA. The Commission has jurisdiction over this proceeding pursuant to Sections 16(a), 17(e), 37, and 43(a) of PURA.

III. Description of Company

Houston County is a member owned cooperative utility providing electric service to approximately 14,724 rural customers in the Texas counties of Houston, Leon, Trinity, Anderson, Walker, Angelina, Cherokee, Madison, and Freestone. Houston County also serves within the city limits of the incorporated cities of Kennard and Latexo. Houston County's existing system includes 3,685 miles of distribution lines. It purchases its power from Tex-La Electric Cooperative and Sam Rayburn G&T. Houston County's last rate increase became effective in 1983.

IV. Quality of Service

A major contested issue in this case was the quality of service provided by Houston County. Several customers made protest statements before the hearing. The majority of these protest statements revolved around the number of service interruptions that these customers experienced.

The Houston County Ratepayers Coalition presented the testimony of several witnesses who also complained of frequent service outages. Mrs. Pamela R. Alford testified on behalf of HCRC. In her prefiled testimony she stated that she experienced a service interruption at least once a week. She also stated at the hearing that she once experienced nine interruptions in a span of forty five minutes. She stated that she has contacted the cooperative about a dozen times due to service interruptions. She stated that the cooperative has been responsive.

Mr. George Andrews is also a customer who testified at the hearing. He stated that he had experienced four or five severe interruptions and that the cooperative had been responsive to his complaints. Ms. Jenna Hackett, another cooperative customer, testified that she had outages about twice a week and every time it rains.

Mr. W. H. Holcomb, Jr., the cooperative's manager stated that one of the reasons the cooperative was seeking this rate increase was to improve the cooperative's financial standing so that it will be able to obtain a \$8,400,000 loan from the REA. The loan would be used to finance system improvements. However, the cooperative is not eligible for the loan until it meets certain minimum financial requirements. Mr. Holcomb testified that the cooperative's long-term plans for improvements include rebuilding its existing lines and clearing its rights of way. He stated that one reason the cooperative's service area experienced so many outages was because of the high number of trees in the

service area. He stated that tree limbs grow over lines causing outages. He also stated that whenever it rains the tree limbs become heavy and break off onto the lines, causing outages.

Mr. Mel Eckhoff, Jr., of the Commission's Electric Division testified on behalf of the Commission's staff. He testified that there were four quality of service complaints filed against Houston County during the test year. Two of the complaints came after an extreme ice storm in January 1988. One complaint was traced to the house wiring of a customer and was not the fault of the utility. One complaint resulted from outages caused by trees in the distribution lines.

Mr. Eckhoff stated that one of the ways a utility's quality of service is determined is from schedule L of the rate filing package. He stated that schedule L shows the annual hours of service interruptions per customer by cause. Houston County's average for 1987 was 5.1 per customer. He stated upon cross-examination that this was high for a cooperative. He also stated that the 1987 median for all cooperatives in Texas reporting to REA was 3.49 hours per customer. The average annual outage hours per customer for the ten cooperatives in the same area as Houston County was 5.57. (Staff Exhibit No. 1, Eckhoff, p. 4.)

Mr. Eckhoff stated that the cooperative's main service problem involves trees interfering with distribution lines. He also stated that this problem is not unique to this utility but is a prevalent problem in the east Texas areas served by this utility and its neighbors. In general, Mr. Eckhoff believes that the cooperative is providing adequate service to its customers.

[1] The evidence in the record demonstrates that the cooperative is not providing totally adequate service to its customers. Judging from the evidence put on by HCRC and the protest statements received from the customers, there are many inconveniences caused by frequent service interruptions. The examiner recommends that the cooperative be required to report to the operations review section of the Commission the progress the cooperative is making in relieving

its financial situation and its progress in obtaining its loan from the REA. The cooperative should also be required to report to the Commission six months from the time it obtains the loan as to the progress the cooperative is making in utilizing the funds to make system wide improvements to prevent the frequent outages. The Commission has the jurisdiction to require this under Section 28 (a) of PURA.

V. Invested Capital

Under Section 41(a) of PURA, rates shall be based upon the original cost of property used by and useful to a public utility in providing service. The components of invested capital are defined in P.U.C. SUBST. R. 23.21(c)(2).

Staff accountant Myra Taylor Kerr did not recommend any changes to Houston County's invested capital figures other than for working cash allowance. Working cash allowance in this instance deals with operations and maintenance and purchased power. Ms. Kerr recommended a working cash allowance of \$252,868, which represents 12.5 percent of the adjusted operations and maintenance expense of \$2,443,289, which is discussed later in this report, as is permitted by P.U.C. SUBST. R. 23.21(c)(2)(iii). This represents a decrease of \$2,683 to the cooperative's request. The cooperative did not contest this decrease. (Staff Exhibit No. 2, Kerr, p. 11.)

Ms. Kerr also recommended an adjustment to the cooperative's requested purchased power working cash allowance. She found that the cooperative's calculation of the purchased power expense was incorrect. She recalculated the days of lag in recovery of purchased power expense, using the information in the cooperative's application, Schedule E-4, page 3. Ms. Kerr's calculation results in a 15.5 day lag. She testified that, as a result of this lag, a factor of 4.2466 percent has been applied to her recommended purchased power expense to produce \$343,585 as working cash allowance related to purchased power. (Staff Exhibit No. 2, Kerr, p. 11.) The cooperative did not object to this adjustment. The examiner recommends it be adopted.

Total invested capital equals \$34,196,376, as follows:

Plant in Service	\$40,939,182
Accumulated Depreciation	<u>(7,669,779)</u>
Net Plant in Service	\$33,269,403
Construction Work in Progress	-0-
Working Cash Allowance	596,453
Materials and Supplies	374,850
Prepayments	100,925
LESS:	
Customer Deposits	<u>(145,255)</u>
TOTAL INVESTED CAPITAL	\$34,196,376

VI. Rate of Return

P.U.C. SUBST. R. 23.21(b)(2)(c) states that the Commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return. The rule further states that the return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. The rule also states that in setting the rate the Commission may consider the need of the utility to attract new capital.

The cooperative requested a rate of return (ROR) of 11.10 percent. The cooperative made it clear that this was a fallout number, and the cooperative is in fact trying to achieve specified TIER and DSC levels. The staff recommended the Cooperative's requested ROR.

A. Houston County's Financial Condition

1. TIER and DSC levels

The cooperative's net TIER and DSC ratios have remained significantly lower than the state and national median levels and have steadily decreased since 1984, one year after the cooperative last received rate relief. [See Attachment No. 1 to this report for a comparison of Houston County's TIER and DSC ratios with the medians.] According to the staff's testimony, the cooperative had a TIER during its test year of 1.03 and a DSC level of 1.31. In addition, the cooperative was below the median TIER of 1.50x required by the REA in 1987 and 1988, and is in technical default. For purposes of determining default status, the two highest values attained over the previous three calendar years are averaged and compared to the default values. The cooperative currently has a loan application with the REA that has been approved but cannot be requisitioned until the cooperative can demonstrate that it is no longer in default. (Staff Exhibit No. 3, Hinkle, pp. 5-6.)

2. Equity level

Houston County's equity level at the end of 1988 was 16.87 percent. This is considerably below the REA recommended minimum level of 40 percent and the CFC recommended level of 30 percent. Due to its low equity ratio, the cooperative cannot rotate patronage capital on an unrestricted basis. (Staff Exhibit No. 3, Hinkle, p. 6.)

3. Cash position

As of December 31, 1988, Houston County's general funds balance totalled \$976,720. Consisting of cash and temporary investments, the general funds balance was higher than the previous year's balance of \$211,205, but significantly lower than state and national median levels. Expressed as a

percentage of Total Utility Plant (TUP), the \$976,720 in general funds represented only a 2.30 percent of TUP, as compared to a 1987 state median value of 6.12 percent and a national median value of 6.53 percent. The staff witness, Ms. Martha Hinkle, stated that although the cooperative maintains a line of credit with its supplemental lenders for meeting short-term cash needs, it is generally desirable to maintain a higher general funds level in order to provide for interim funding of construction projects and for meeting unforeseen contingencies. (Staff Exhibit No. 3, Hinkle p. 6.)

B. Financial Objectives of Houston County

Houston County has expressed three financial objectives:

1. To gradually attain an equity ratio of 40 percent. Specifically, the cooperative projects the attainment of a 31.5 percent equity position in calendar year 1996.

2. The attainment and maintenance of a 15-year patronage capital rotation cycle.

3. The maintenance of a net TIER ratio of 2.2x and a DSC ratio of 2.4x. In addition, the cooperative would like to maintain its general funds level at 15 percent of total utility plant. (Staff Exhibit No. 3, Hinkle, p. 7.)

Ms. Hinkle stated that an equity ratio of 40 percent is desirable. She stated that considering the cooperative's current equity level of 16.9 percent, its equity level needs to increase about 1.8 percent per year between 1989 and 1996 to attain the cooperative's specifically stated goal of 31.5 percent.

Ms. Hinkle found that a net TIER of 2.2x is reasonable as it is within the range of 2.0x to 3.0x generally recommended by the CFC and is slightly below the 1987 state and national median levels for REA distribution cooperatives (2.38x and 2.36x respectively). A DSC of 2.4x, while not unreasonable, is above the state and national median levels of 2.23x.

Ms. Hinkle stated that a 15-year cycle for the rotation of patronage capital is common for electric distribution cooperatives. However, rotation will not be possible in the near future due to the cooperative's low equity level and low net margins. For equity levels below 40 percent, the rotation of patronage capital is restricted to 25% of the previous year's net margins.

With respect to the general funds level, a 15 percent general funds to TUP ratio percent general funds level is significantly higher than the state and national medians of approximately 6 percent. The average general funds balance for Houston County from 1980 to 1988 was only 1.6 percent. Ms. Hinkle concluded that a general funds level of 6 percent is an appropriate projection for Houston County. (Staff Exhibit No. 3, Hinkle, pp. 7-8.)

C. Houston County's Requested Rate Of Return

Houston County's requested rate increase of 14.8 percent has a fallout rate of return of 11.1 percent. Cooperative witness Mr. Steven J. Shurbutt testified that this ROR is approximately equal to the ROR necessary to meet the cooperative's cost of capital.

D. Staff's Recommendation for Return

Staff financial analyst Hinkle testified as to the proper ROR on invested capital for Houston County. Ms. Hinkle explained that she analyzed Houston County's proposed ROR in light of the cooperative's expected growth in plant and the borrowing requirements of the cooperative through June 30, 1991. She paid special attention to Houston County's TIER, DSC, and equity ratios.

Ms. Hinkle used the staff's Cooperative Financial Planning model to generate pro forma financial statements for Houston County for the three years following the test year (1988-1991). Using historical data from the test year

and from the six month period ending December 31, 1988, she incorporated the following set of assumptions into the model:

1. Houston County will implement new rates as of July 1, 1989. For purposes of estimating the cooperative's financial condition at June 30, 1989, she assumes that the cooperative will achieve a rate of return of 4.5 percent on the staff's recommended base rate for the test year. This ROR generates approximately \$1.5 million of return, an amount approximately 4 percent less than the Cooperative's return in the test year.

2. The cooperative will have plant additions of \$1,600,000 in the year ending June 30, 1989, \$3,675,000 in the year ending June 30, 1990, and \$3,675,000 in the year ending June 30, 1991. These values are stated net of projected contributions in aid of construction (CIAC), and are supported by the two year work plan submitted in a loan application to the REA. Also, plant retirements will occur as projected by the cooperative in the amount of \$700,000 per year.

3. The June 1989 ending funds balance is such that the borrowing requirements for the year ending June 1989 equal zero, because the cooperative's current financial condition precludes additional borrowing. The ending general funds balance is then increased to 6.0 percent of total utility plant in 1990 and 1991.

4. The interest rate on Houston County's variable rate Texas Bank for Cooperatives (TBC) loans will remain at the current rate of 11 percent throughout the remaining planning period. It is also assumed that any additional supplemental loan funds will be obtained from the TBC at this same rate of interest.

5. Non-operating interest margins were assumed to vary with the average general funds balance. A weighted average interest rate of 8.875 percent was calculated assuming that 75 percent of Houston County's general funds are

invested in certificates of deposit at 10 percent and the remaining portion deposited in bank accounts at 5.5 percent. This interest income was then added to the \$33,295 in annual interest on CFC Capital Term Certificates for purposes of calculating total non-operating interest margins.

6. No G&T capital credits will be assigned to the cooperative during the planning period. It is further assumed that Houston County will receive approximately \$9,000 per year in capital credit allocations from Texas Credit Cooperatives. These capital credits are assumed to be non-cash.

7. The cooperative will receive cash distributions of \$56,964, \$60,983, and \$62,851 respectively for the years ending December 31, 1988, 1989, and 1990, in recognition of previous capital credit assignments from CFC and TEC. In addition, an additional amount of \$5,283 in 1990 and \$5,757 in 1991 to estimate cash distributions from TBC. This amount is calculated as 2 percent of the interest paid by the cooperative in the previous year.

8. The projected amounts for patronage capital rotation are zero throughout the planning period.

9. Also assuming the staff recommended base rate and composite depreciation rate.

(Staff Exhibit No. 3, Hinkle, pp. 10-11.)

Ms. Hinkle attached to her testimony the analysis that she performed at the requested 11.0 percent rate of return. [See Attachment No. 2 to this report.] This output was generated using the staff's Cooperative Financial planning model and provides key financial data, pro forma financial statements, and investment and debt summaries for the test year and the years ending June 30, 1989, 1990, and 1991. The projected TIER and DSC ratios for 1990 and 1991 are only slightly lower than those projected by Houston County. The projected net TIERS of 2.13x in 1990 and 2.09x in 1991 are below the state and national median values of 2.38x and 2.36x respectively, and slightly lower than the net

TIER of 2.25x desired by the cooperative. The DSCs projected by the model of 2.15 for 1990 and 2.14 for 1991 are slightly below the state and national median value of 2.23, and significantly below the cooperative's desired 2.4x. The projected net TIER and DSC ratios are based on the assumption that the cooperative's \$7,092,902 in variable rate debt will remain at the current rates of interest. If the interest rates go up, these coverage ratios will likely decrease. Conversely, if interest rates go down, the coverage ratios will likely increase. (Staff Exhibit No. 3, Hinkle, p. 12.)

As for the projected equity balance, Ms. Hinkle testified that the results indicate that a rate of return of 11.10 percent would produce an equity to capitalization ratio of 24.03 percent by the end of 1991. This ratio is higher than the 22.16 percent average equity ratio projected by the cooperative. The projected growth in Houston County's equity ratio under the requested ROR is 3.98 percent in 1990 and 3.97 percent in 1991. Although this is a higher equity growth than is usually recommended, it is not unreasonable in light of the cooperative's current low equity position.

Ms. Hinkle also developed a schedule which summarizes the results of a sensitivity analysis using rate of return values between 10.5 percent and 11.40 percent. [See Attachment No. 3 to this report.] The criteria used to evaluate the reasonableness of the ROR values in schedule MH-IV are:

1. The resulting net TIER ratios should be close to or within the range of 2.0x to 3.0x recommended by the CFC.
2. The resulting values for Modified TIER and DSC should approximate the state and national median values.
3. The equity ratio should increase gradually over the planning horizon. Given the current low equity position of the cooperative, an average increase of 2 to 4 percentage points per year would be reasonable.

As can be seen from the attached schedule, at the 10.5 and 10.8 percent RORs, the Modified TIER fell below the state median level of 2.05x. None of the RORs produced a DSC ratio above the state and national median of 2.23x. All of the RORs increased the equity ratio by 3 to 4 percent annually. Based upon these results, rates of return between 10.8 and 11.4 percent meet most of the criteria which Ms. Hinkle established. This range of RORs produce net TIER and DSC ratios that will restore the financial integrity of the cooperative by getting them out of technical default. Ms. Hinkle recommended the approval of the requested rate of return of 11.1 percent.

On cross-examination by the attorney for Oliver Bass Lumber Co., Ms. Hinkle stated that a 9.1 percent rate of return would get the cooperative out of default. However, a 9.1 rate of return would produce a TIER level of 1.74. On cross-examination by the cooperative, Ms. Hinkle stated that the recommended TIER level for cooperatives was between 2 and 3 percent. The projected TIER level from the 11.1 percent increase is 2.1 percent. It is therefore at the lower end of the staff's recommended range of TIER levels. Ms. Hinkle stated that while an 11.1 percent will put this cooperative into better shape, it will not make it strong as compared to other cooperatives.

E. Examiner's Discussion and Recommendation

The examiner recommends that the Commission adopt Ms. Hinkle's recommended rate of return of 11.1 percent. The examiner realizes that a balance must be achieved between the Cooperative's financial condition and the impact of the rate increase on its ratepayers. As mentioned earlier, P.U.C. SUBST. R. 23.21 (b)(2)(c) states that the return should be reasonably sufficient to assure confidence in the financial soundness of the utility. The rule further allows the Commission to consider the need of the utility to attract new capital. The cooperative has a loan application pending with the REA worth approximately 8.4 million dollars. The REA has approved \$6.164 million of the loan. However, the funds cannot be requisitioned until the cooperative can demonstrate that it is no longer in default.

The proceeds from this loan are intended to cover the costs of construction and improvements to the cooperative's service area. Approval of the loan depends upon an improvement in the cooperative's financial condition. The results of Ms. Hinkle's analysis indicates that a rate of return in the range of 10.8% to 11.4% would create a net TIER range of 2.03x to 2.19x over the planning horizon. Ms. Hinkle did not recommend the 10.8% number because of the cooperative's poor financial condition. She felt it important to provide a margin of safety. A 9.1% ROR would allow the cooperative to get out of default and would result in a net TIER of 1.74x by the year 1990. However, as Ms. Hinkle testified, the recommended TIER level is from 2 to 3%. The 2.1% that the 11.1% ROR would produce is on the low end of the recommended scale and is below the state and national medians. Therefore the 9.1% number would produce lower ratios and no margin of safety for the cooperative. It would also force the cooperative to apply for another rate increase much sooner.

An 11.1% rate of return will restore the cooperative to a reasonable but not excessively strong financial condition. It will also allow the cooperative to attract capital, as allowed by the Commission's substantive rules, so that system improvements can be made. This should alleviate the frequency of system outages of which the intervenors complained. However, P.U.C. SUBST. R. 23.21 (b)(2)(c) also states that the return should assure confidence in the financial soundness under efficient and economical management. Since the financial [2] condition of the cooperative is in such poor shape, the examiner recommends that the General Counsel and staff be directed and authorized under Section 29(a) of the PURA to conduct an investigation and review of the cooperative's management. On the basis of the investigation and review, the General Counsel should use its discretion to initiate a formal inquiry in a contested case seeking a Commission order to implement specific changes.

VII. Cost of Service

A. Purchased Power Expense

The cooperative proposed purchase power expense of \$8,090,822. As shown on the cooperative's schedule A, that sum includes \$770,709 of reconcilable purchased power expense. [See Attachment No. 4 to this report.] The staff accepted this figure. The examiner finds this figure to be reasonable and recommends its adoption.

B. Operations and Maintenance

1. Payroll expense

The cooperative requested an increase of \$4,790 to test year payroll expense of \$1,014,619. Ms. Kerr recommended a decrease of \$9,107 to test year payroll expense, resulting in a decrease of \$13,897 to the cooperative's request. The cooperative utilized three steps in deriving its requested payroll expense of \$1,019,409. The hourly base wage for all employees as of September 30, 1988, \$600.93 was multiplied by 2080, the standard number of hours for which employees are compensated in base wage, to total base wage of \$1,249,934. Base wage was then increased by the cooperative's overtime factor of .16377, the average over a four year period. That produced a wage requirement of \$1,454,636. The cooperative's payroll expense factor of .7008 was then applied. (Staff Exhibit No. 2, Kerr. pp. 4-5.)

The staff computed payroll expense by multiplying the hourly base wage for all employees as of February 20, 1989 (\$596, which was the latest available wage) by 2080. The resulting base wage of \$1,239,680 was increased by an overtime factor of .1574 (the staff corrected the overtime factor to remove January 1988 overtime from the average because it was unusually high). Staff recommended total payroll expense of \$1,005,512. The cooperative did not rebut the staff's reduction. The examiner recommends approval of the staff's recommended expense of \$1,005,512.

2. Employee benefits

The cooperative requested an increase of \$23,779 to test year employee benefit expense of \$242,074. This adjustment includes changes to retirement/savings, medical insurance, life insurance, disability insurance and directors' insurance. The staff recommended adjustments to the medical insurance expense, which reduces the cooperative's requested expense by \$4,957 to \$134,690. Additionally, the staff reduced the retirement/savings expense by \$3,410 to remove contributions attributable to an employee no longer in the program. Staff recommends an increase of \$15,411 to test year expenses for a total of \$257,485, instead of the \$265,853 requested by the cooperative. (Staff Exhibit No. 2, Kerr, p. 6.) The examiner concurs with the staff's recommendation.

3. Workers compensation

The staff's adjustment to workers compensation resulted from the adjustment to payroll expense described earlier. The cooperative requested an increase of \$6,271 to test year expense of \$11,359, using an estimated payroll allocation. Staff, basing its recommendation on the actual payroll of February 20, 1989, recommended an increase of \$6,125 to test year. (Staff Exhibit No. 2, Kerr, p. 6.) This decreased the cooperative's request by \$146. Since the staff's recommendation is based upon the actual payroll, the examiner recommends its adoption.

4. Legal/strike related expenses

In the staff's examination of miscellaneous/general expense, they found an item noted as "payroll/lawsuit, back pay for striking workers," in the amount of \$7,917. The staff recommended elimination of this expense as a non-recurring expense of utility service. This results in a recommended decrease of \$7,917 to the cooperative's request. (Staff Exhibit No. 2, Kerr, p. 7.) The examiner recommends this decrease.

5. Uncollectible expense

The staff recommended an uncollectible expense of \$90,652, which reduces the cooperative request of \$107,025 by \$16,373. This was done because the staff discovered that the cooperative has instituted new procedures leading to improved collections and has increased required deposits which will offset some past due accounts. Therefore the staff recommended the new calculation of:

$$\$78,606/13,672,591 = .57\% \text{ of revenue,}$$

using the \$78,606 actual write-off in 1989 for uncollectible accounts incurred in 1988 as a percentage of the 1988 revenues of \$13,672,591. Using this percentage, the staff recommends an increase of \$9,160 to test year uncollectible expense of \$81,492 for a total of \$90,652. (Staff Exhibit No. 2, Kerr, p. 8.) Because this figure reflects an adjustment due to the cooperative's new practice regarding uncollectible expenses, the examiner recommends it.

6. Rate case expense

The cooperative requested that \$25,000 in rate case expense be amortized over a two year period. The staff discovered that the cooperative has documented \$46,734 in rate case expenses. Houston County last filed for a rate increase in 1982, which became effective in 1983, representing a time lapse of six years. For this reason, Ms. Kerr recommended a minimum five-year amortization period for documented rate case expenses to spread the recovery over the period in which the rates set in this hearing will likely be effective. (Staff Exhibit No. 2, Kerr, p. 7.)

Houston County contested this adjustment. The cooperative argued in its final brief that the five year period was chosen because of the staff's opinion that the five year period since the cooperative's last rate case was representative of the normal amount of time between cooperative rate cases.

The cooperative further argued that the five year period between Houston County rate cases is an anomaly and that most cooperatives file rate cases every two years. Houston County's brief states that it will probably not go another five years between rate cases. The general counsel argued in its reply brief that the five year period represents the only historical data available to the Commission specific to this cooperative.

The examiner could find no Commission rule as to the number of years over which a utility should amortize its rate case expenses. At the hearing, Ms. Kerr stated that if this utility filed a requesting for a change in rates before five years have elapsed, the amortization would simply carry over. Because the five year period is the only historical data available for this cooperative, the examiner recommends amortizing the rate case expense of \$46,734 over a five year period.

7. Other operations and maintenance expenses

Houston County requested other operations and maintenance expenses in the following amounts:

Operations and Maintenance not adjusted	\$236,539
Maintenance	719,365
General Liability Insurance	78,717
Umbrella Insurance	36,105
Legislative Advocacy	-0-

Ms. Kerr included these amounts in her recommendation. [See Attachment No. 4.] The examiner finds these amounts reasonable and recommends they be adopted.

8. Summary

The total recommended operations and maintenance expense for Houston County is \$2,443,289, which is comprised of the following:

Operations and Maintenance not adjusted	\$236,539
Maintenance	719,365
Payroll	1,005,512
Employee benefits	257,485
Workmens Compensation	17,484
General Liability Insurance	78,717
Umbrella Insurance	36,105
Legislative Advocacy	-0-
Rate Case	9,347
Legal/Strike Related	(7,917)
<u>Uncollectible Expense</u>	<u>90,652</u>
TOTAL	\$2,443,289

C. Depreciation Expense

Mr. Eckhoff found the depreciation rates requested by Houston County to be within the range accepted by the REA Bulletin 183-1 and to be reasonable. He did not recommend any change in the recommended depreciation rates and the examiner concurs. (Staff Exhibit No. 6, Eckhoff, p. 6.)

D. Taxes

1. Payroll taxes

Ms. Kerr recommended a reduction of \$866 to the cooperative's request for payroll tax expense. This reduction was made partly because the cooperative requested a decrease in test year employee taxes of \$1,553 while staff

recommended a decrease of \$2,419 from test year expense of \$84,600. The payroll tax expense results from a combination of three payroll tax elements: FICA, FUTA, and SUTA. There was also an error in the cooperative's calculation of state unemployment tax which also affected this expense account. The staff's adjustment results in payroll tax expense of \$82,181. (Staff Exhibit No. 2, Kerr, p. 10.) The examiner adopts the staff's recommendation.

2. Texas Ad Valorem taxes

Ms. Kerr recommended a reduction of \$3,550 to the cooperative's requested Texas ad valorem tax expense of \$112,009. The cooperative had submitted an estimate of ad valorem taxes. The staff calculated a factor which is the ratio of actual taxes paid for the period (\$106,965) to total utility plant on January 1, 1988, (\$40,375,408). Application of the resulting .00269 factor to the utility plant in service amount as of June 30, 1988, (\$40,939,182) produced the staff recommended ad valorem tax expense of \$108,459, a reduction of \$774 to the test year amount and \$3,550 to the cooperative's request. (Staff Exhibit No. 2, Kerr, p. 9.) The examiner finds the staff recommendation reasonable and recommends its approval.

3. P.U.C. assessment

The staff adjusted the percentage established by the cooperative regarding P.U.C. assessment tax. The reduction of \$117 to the cooperative's request results from application of the percentage to a lower revenue requirement. The staff multiplied a factor of .001667 to the revenue requirement of \$15,905,482 to get a figure of \$26,511. (Staff Exhibit No. 2, Kerr, p. 10.) The examiner recommends approval of the \$26,511 amount.

E. Interest on Customer Deposits

Ms. Kerr recommended an increase of \$509 to the interest on customer deposits requested by Houston County. This adjustment was recommended due to the fact that on December 12, 1988, the Commission raised the required interest rate on customer deposits held by utility companies from 6 percent to 6.35 percent. The cooperative had requested interest expense of 6 percent. Houston County holds \$145,255 in customer deposits subject to this interest. The staff increased the request by $\$145,255 \times .35\% = \509 . (Staff Exhibit No. 2, Kerr, p. 9.) The examiner recommends the approval of \$9,224 for interest on customer deposits.

F. Return Dollars

The examiner's recommended rate of return of 11.1% applied to the recommended invested capital of \$34,196,376 provides a total in return dollars of \$3,795,798.

G. Summary

Total revenue requirement recommended is \$15,903,865. It is comprised of the following:

Fuel	-0-
Purchased Power	\$8,090,822
Operations and Maintenance	2,443,289
Depreciation	1,347,581
Other Taxes	9,224
Interest on Customer Deposits	217,151
Return	<u>3,795,798</u>
Revenue Requirement	\$15,903,865

VIII. Cost of Service Study

The purpose of a cost of service study is to assign the total cost of service for the cooperative to its various customer classes based on a methodology which allocates those costs according to class responsibility. The cost of service studies performed by Houston County and the staff both followed the traditional development:

1. Gathering and organizing accounting and load data to be used in the study;
2. Functionalization of costs, which is the organization of rate base and expense items into homogeneous accounts or groups;
3. Classification of costs as either demand, energy or customer-related; and
4. Allocation of costs to the different customer classes according to the appropriate allocation factor.

(Staff Exhibit No. 4, Bradford, p. 4.)

A. Account Allocation Factors

Mr. Eugene Bradford of the Commission's Electric Division reviewed the cost of service study submitted with the cooperative's rate filing package. Mr. Bradford recommended different allocation factors for several accounts. One recommended change is for account 583 (overhead line expenses). Account 364 is the distribution plant account for poles, towers, and fixtures. Houston County classified this account using its account 364 classification factor. Staff recommended allocating account 583 using a composite allocator for accounts 364

and 365. The cooperative used the Total Utility Plant classification factor to classify account 920 (administrative and general salaries). The staff recommended allocating account 920 using the composite payroll allocator. The cooperative classified account 923 (outside services employed) by Total Utility Plant into consumer, demand, and security lighting functions. The staff recommended allocating these expenses on the basis of cost of service revenues because these expenses are related more to level of revenues than they are to the Total Utility Plant levels. The cooperative classified account 932 by using its Total Utility Plant classification factor. The staff used the composite General Plant allocator. Because account 932 is maintenance of general plant, it is more closely related to General Plant.

The cooperative did not rebut the staff's recommendations. The examiner finds them reasonable and recommends their approval.

B. Total Revenue Allocator

Mr. Bradford also reviewed the cooperative's total operating revenue allocation factor. Mr. Bradford explained that a total operating revenue allocation factor is typically derived from a cost allocation study performed at a uniform rate of return. In such a study, return dollars are calculated by multiplying the rate base associated with each customer class by the system rate of return. The resulting total operating revenue allocator is then created by adding together total expenses and return dollars for each customer class. (Staff Exhibit No. 4, Bradford, p. 8.)

The cooperative's cost allocation study calculates return dollars by multiplying rate base subtotals by rate of return values selected individually for each customer class. This means that the revenue allocator is developed without a uniform rate of return.

Mr. Bradford testified that he did not agree with the cooperative's approach to calculating the total operating revenue allocation factor. He instead recommended that the total operating revenue allocation factor be based on a cost allocation study performed at a uniform rate of return. The reason for this recommendation is that the cooperative's approach incorporates discretionary rate of return ratings in the cost allocation study. The net result is that the accounts allocated on the basis of total operating revenue are biased by the selected weighings. Further, return dollar transfers among customer classes should be excluded from the cost allocation study and performed only during the revenue assignment phases of a rate case. The cooperative did not rebut this recommendation. The examiner finds that it is reasonable and recommends its approval.

C. Staff Proposed Revenue Requirement

The Staff did not recommend that customer class revenues be assigned on a uniform rate of return basis in this docket. Mr. Bradford testified that assigning the base rate revenue requirement on a uniform rate of return basis is desirable only if it does not result in a severe departure from existing revenue requirements. In this case, Mr. Bradford stated, a uniform rate of return is not recommended because it would significantly alter the revenue requirements of several of the cooperative's customer classes.

According to the revenue requirement recommended by staff witness Kerr, the cooperative will receive a base rate revenue increase of \$2,745,300 (before reconcilable purchased power expense is deducted) or approximately 20.97% over the current adjusted base rate revenue. The proposed revenue increase for each customer class is presented in Mr. Bradford's Schedule I. [See Attachment No. 5.]

The class revenue increase adjustments proposed in this schedule are based on three primary criteria: the cost allocation results, the revenue impact on the current adjusted rate, and the relative rate of return index, which indicates the direction and degree of deviation with respect to the return on base rate. Because of these three criteria, Mr. Bradford testified, it is necessary to modify the cost of service at a uniform rate of return. (Staff Exhibit No. 4, Bradford, p. 11.)

As indicated in column 6 of Schedule I, the requested revenue change for each class ranges from 5.40 percent for the small commercial class to 61.72 percent for the seasonal class under the uniform rate of return cost of service. Typically, the staff recommends that no class receive an increase greater than the 1.5 times the system average increase. Thus the staff reduced the requested increase to the seasonal class of 61.72 percent to 1.5 times the 20.97 percent system average increase, or 31.45 percent. This necessitated an increase to other classes so that the total staff proposed revenue requirement would equal the total cost of service revenue requirement. This increase was proportionally added to the small commercial, large power-1, large power-2, and security lighting classes. (Staff Exhibit No. 4, Bradford, p. 12.)

Mr. Bradford further stated that revenue assignment guidelines are subject to review and revision if cost or allocation adjustments are performed. More specifically, revenue assignment recommendations are contingent upon the data presented in Schedule I. Changes to schedule I may therefore warrant revised revenue assignment recommendations.

The cooperative did not rebut the staff's recommendations. Oliver Bass took the position that the seasonal class rates should be increased more than the cooperative had requested they be increased. The examiner finds that the

evidence does not support this position. The examiner finds that the seasonal rates should be decreased as recommended by the staff so that the seasonal class not receive an increase greater than 1.5 times the system average increase. The examiner also recommends adopting the staff's recommended revenue requirement.

D. Rate Design

"Rate design" describes the allocation of revenue responsibility among the classes as well as the design of the actual rates for the classes. The general purpose of rate design is to set prices so as to provide a utility with the opportunity to recover reasonable and necessary operating expenses and earn a fair rate of return on invested capital. Rates should also provide consumers with efficient price signals and should be fair and equitable.

Mr. Bradford testified that currently Houston County has a declining block rate structure. For residential customers, the first 200 kWh of usage is billed at 9.45 cents per kWh. Above 200 kWh, the rate declines to 7.45 cents per kWh. For small commercial customers, the first 400 kWh of usage is billed at 9.45 cents per kWh. Above 400 kWh, the rate declines to 7.72 cents per kWh. (Staff Exhibit No. 4, Bradford, p. 13.)

The cooperative proposed to keep the structure of the residential and small commercial charges the same. The cooperative is proposing to increase the charges to 11.2 cents per kWh for the first block of use, and to 9.2 cents per kWh for additional uses for both classes. These increases reflect the cooperative's proposed increase in cost of service for the two classes. The cooperative argued in Schedule Q-6 of the rate filing package that the customer

charges for residential and small commercial service are much less than the consumer related costs per month indicated by the cost allocation process. By charging a higher rate for the first kWh block of service, a greater portion of the consumer-related costs can be recovered more quickly.

Mr. Bradford stated that the staff recommended a flat rate of 9.72 cents per kWh be used for the residential kWh charge and 9.1 cents per kWh be used for the small commercial kWh charge. This means that one rate would apply for all kWh usage for each of those classes. (Staff Exhibit No. 4, Bradford, p. 14.)

Mr. Bradford testified that he recommended this adjustment due to the fact that Houston County's rates are higher than the other distribution cooperatives in the Texas Electric Cooperatives, Inc. (TEC) load group No. 1. [See Attachment No. 6.] Additionally, schedule II shows that most of the other utilities use either a flat rate or a seasonal rate rather than a straight declining block rate. Schedule III shows the same information for the small commercial class. [See Attachment No. 7.]

Mr. Bradford's concern with the declining block structure is that because the cooperative's rates are higher than those of the other utilities anyway, the declining block structure makes it especially costly for the first energy block. A customer who has difficulty affording the electric rates cannot avoid the most expensive block because it is the first block. (Staff Exhibit No. 4, Bradford, p. 16.)

The proposed flat rate would eliminate this difficulty. The effect would be to make the electric bills slightly lower for customers who use small amounts of electricity and slightly higher for customers who use large amounts of electricity. This will allow customers to more effectively control their electric bills by increasing or decreasing their usage. (Staff Exhibit No. 4, Bradford, p. 16.)

Mr. Bradford observed that a declining block rate structure allows the utility to more quickly recover consumer-related costs. Houston County argued that this is necessary because the customer charge does not cover all the consumer related costs. Mr. Bradford stated that his analysis of the customer charge components of Houston County's rates (which will be covered in the next section) indicates that the current customer charges cover the costs that they are designed to cover.

The examiner finds that a flat rate structure would not only allow customers to more effectively control their bills but would also be in line with Commission policy to encourage conservation. For this reason, and the reasons discussed in the next section, the examiner finds that Houston County should be ordered to utilize a flat rate structure.

E. Customer Charge Analysis

Mr. Bradford also reviewed the cooperative's proposed increase to customer charges. He explained that a customer charge can be described as a fee for access to an electric system. This charge must be paid regardless of the amount of electricity used by the customer. It is designed to recover those costs specifically related to customers.

Mr. Bradford acknowledged that there are differing opinions with regard to customer related costs. He stated that there is general agreement that meter reading, billing, collections, and mailing expenses are customer related. In addition, many analysts believe that the annual carrying charges and operation and maintenance expenses associated with meters and service drop lines should be classified as customer related. Professional opinion is divided, however, with respect to various expenses. (Staff Exhibit No. 4, Bradford, p. 17.)

The staff follows a two-step procedure when deriving pertinent customer charges. The first step involves identifying the costs to be recovered. A cost-based charge is then calculated by dividing applicable costs by test year billing determinants. The second step involves comparing the calculated charges with charges previously approved by the Commission. The staff further feels that a customer charge should recover only those costs which vary closely with the number of customers. Costs incurred to provide overhead support or power consumption are therefore not included in the calculation of customer based charge. The staff's cost-based customer charge is derived from the following cost items:

1. The carrying charges and the operation and maintenance expenses related to service drop lines and meters; and
2. The expenses associated with meter reading, billing, mailing, collections, and related administrative activities which vary closely and directly with the number of customers.

(Staff Exhibit No. 4, Bradford, pp. 18-19.)

Mr. Bradford calculated these charges for Houston County. These calculated cost-based customer charges are intended only to serve as one of the factors incorporated into the decision making process. Mr. Bradford's Schedule VII shows customer charge comparisons for the residential and commercial customer classes. [See Attachment No. 8.] The cooperatives shown in Schedule VII were all selected on the basis of load group designations and all belong to TEC. Because the cooperatives are organized on the basis of climatic, geographic, and load type characteristics, Mr. Bradford felt it was reasonable to compare them.

Mr. Bradford testified that Schedule VII shows that the cooperative's proposed residential customer charge is above the area-wide average for the TEC Load Group. He also stated that the proposed rate would be closer to the average for both the single-phase and three-phase charges.

Mr. Bradford's recommendation for customer charge is to maintain the cooperative's current customer charges:

- | | |
|-----------------------------|---------|
| 1. Residential service | \$ 8.00 |
| 2. Seasonal service | \$10.00 |
| 3. Small commercial service | \$ 8.00 |

(Staff Exhibit No. 4, Bradford, p. 20.)

Mr. Bradford stated that even though the proposed rates would be in the range of customer charges for other cooperatives, the information suggests that the lower current customer charges may be more appropriate. The staff's customer charge approach limits the customer charge calculation to expense and investment items which are directly and closely related to the hookup of a single customer. He stated that the cost items excluded from the staff's approach, but included by the cooperative, are administrative and general expenses, interest on long-term debt, and some distribution O&M accounts.

(Staff Exhibit No. 4, Bradford, p. 21.)

The cooperative argued in its closing brief that the customer charge proposed for each of the rate classes is well below the consumer-related monthly cost determined by the cost of service analysis. The cooperative also argued that the revenue not collected in the form of customer charges has been recovered in part through the use of the declining block structure.

The staff's customer charge approach is limited to expense items related to a given customer. High customer charges limit the ability of customers to control a substantial part of their monthly bills and therefore make small-volume users pay a relatively high average usage charge. Such an outcome makes it difficult for consumers to exercise control over their cost of electricity, by means of controlling energy use. In keeping with the philosophy that customer charges should be related to expense and investment items which are directly and closely related to the hookup of a single customer and in the interest of promoting energy efficiency, the examiner finds the staff's recommended adjustment reasonable and recommends its approval.

F. Schedule HC-CLG

Schedule HC-CLG would flow through to retail customers the lower wholesale power costs from Sam Rayburn G&T (SRGT) available under SRGT's Schedule SRG&T-CLG88. This schedule was approved by the Commission for SRGT to provide for contract load growth through a special rate for new load of 2500 kWhs or more. Application of Sam Rayburn G&T Electric Cooperative, Inc. for Approval of Contract Load Growth for Economic Development Service, Docket No. 8248, ____ P.U.C. BULL. ____ (January 4, 1989).

Mr. Bradford testified that both of SRGT's other distribution cooperative customers have had economic development rates approved to pass through the lower wholesale power costs to retail customers of the SRG&T-CLG88 rate. (Staff Exhibit No. 4, Bradford, p. 23.)

The Schedule HC-CLG consists of a consumer charge of \$50.00. Additionally, there is a 1.31 percent charge against the plant investment for carrying charges. Finally, there is a demand and energy charge that simply passes through the demand and energy costs from SRGT with a markup for an allocated portion of Houston County's fixed costs. (Staff Exhibit No. 4, Bradford, p. 23.)

Mr. Bradford recommended adoption of this proposed rate. He stated that the Commission has already adopted SRGT's Schedule SRG&T-CLG88 and this would allow the pass-through of this rate to retail customers in order to encourage customer load growth. The examiner also recommends approval of this rate. This cooperative is in need of load growth as one of its problems is a low customer/line density.

IX. Other Proposed Tariff Revisions

The cooperative's existing service rules and regulations have been completely revised to conform to the latest edition of the Commission's Substantive Rules dated September 1, 1988. A large portion of the revisions merely involve changes in text and organizational format. The more significant changes have been itemized with explanation in the cooperative's Schedule L-2. [See Attachment No. 9 to this report.]

One significant proposed new tariff provision is a charge for the labor and transportation costs for removing an idle facility when a customer requests a disconnection in order to obtain electric service from another facility. Another revision involves instituting a \$55.00 charge for expense incurred by the cooperative in investigating, disconnecting and estimating the billing for unmetered energy when a customer has been receiving the benefits of unmetered electric energy. These proposals were not challenged. The examiner finds them reasonable and recommends their approval.

X. Summary

The examiner recommends a total revenue increase of \$1,974,591 which represents a \$2,745,300 base revenue increase over adjusted test year base revenue less reconcilable purchased power expense of \$770,709. This increase is less than the \$2,055,212 revenue increase that Houston County published notice that it was seeking. In addition, the examiner recommends that since there were numerous protest statements dealing with quality of service problems in Houston County's service area, that a management audit be done on the cooperative and that reporting requirements be instituted.

XI. Findings of Fact and Conclusions of Law

In addition, the examiner recommends the following findings of fact and conclusions of law:

A. Findings of Fact

1. Houston County Electric Cooperative, Inc. (Houston County or the cooperative) is a member-owned cooperative public utility providing electric service to approximately 14,724 customers in the Texas counties of Houston, Leon, Trinity, Anderson, Walker, Angelina, Cherokee, Madison, and Freestone. Houston County also serves within the incorporated city limits of Kennard and Latexo.
2. On January 20, 1989, Houston County filed a statement of intent to increase its rates \$2,055,212, or 14.8% over test-year revenues.
3. Houston County's rate filing package is based on test-year ending June 30, 1988.

4. Houston County published notice of the proposed rate increase once each week for four (4) consecutive weeks in newspapers of general circulation in each county containing service territory affected by the proposed change.

5. Notice was provided to the cities of Kennard and Latexo.

6. Houston County filed publisher's affidavits confirming publication of notice.

7. The implementation of the proposed rate increase was suspended until July 24, 1989, pursuant to an order dated February 6, 1989.

8. A prehearing conference was held in this docket on February 15, 1989.

9. On April 6, 1989, Oliver Bass Lumber Co., Inc. (Oliver Bass) and the Houston County Ratepayers Coalition (HCRC) were granted party status in this proceeding.

10. The hearing on the merits in this docket convened on April 28, 1989 and lasted through May 1, 1989.

11. It is reasonable for Houston County to report to the Commission's Operations Review division the progress it is making in relieving its financial situation. Additionally, it is reasonable to require the cooperative to report to Operations Review six months from the time it obtains its REA loan as to the progress it is making in utilizing the funds to make system improvements to prevent frequent outages.

12. Houston County has total invested capital of \$34,196,376, the components of which are:

Plant in Service	\$40,939,182
Accumulated Depreciation	<u>(7,669,779)</u>
Net Plant in Service	\$33,269,403
Construction Work in Progress	-0-
Working Cash Allowance	596,453
Materials and Supplies	374,850
Prepayments	100,925
LESS:	
Customer Deposits	<u>145,255</u>
TOTAL INVESTED CAPITAL	\$34,196,376

13. The long-term financial objectives of Houston County identified by staff witness Martha Hinkle in Section VI of this report are reasonable. They are:

- a. an equity ratio of 30 to 40 percent;
- b. the attainment and maintenance of a 15-year capital credit rotation cycle; and
- c. a net TIER of 2.2x.

14. A rate of return of 11.10 percent, which would provide an annual dollar return of \$3,795,798, will allow the cooperative to improve its financial condition to a reasonable but not excessively strong level and is therefore a reasonable rate of return.

[2] 15. Because the financial condition of the cooperative is so poor, the examiner finds it reasonable that the Commission's general counsel and staff be directed to conduct an investigation and review of the cooperative's management pursuant to Section 29(a) of the PURA.

16. The following cost of service is reasonable for Houston County:

Purchased Power	\$8,090,822
Operation and Maintenance	2,443,289
Depreciation	1,347,581
Interest on Customers Deposits	9,224
Other Taxes	217,151
Return	<u>3,795,798</u>
TOTAL	15,903,865

17. The staff's recommended adjustments to Houston County's cost of service study are appropriate and reasonable for the reasons given in Section VIII of this report and should be adopted.

18. The staff's recommended revenue requirement as set forth in Section VIII of this report is reasonable and should be adopted.

19. The staff's recommended rate design, contained in Section VIII of this report, which recommends a flat rate structure, is reasonable and should be adopted.

20. The staff's recommended customer charge fees as discussed in Section VIII of this report are reasonable and should be adopted.

21. The revenue allocation and rate design contained in Attachment No. 4 is fair and reasonable for the reasons set forth in Section VI of this report.

22. It is reasonable to allow this cooperative to utilize Schedule HC-CLG to pass through to retail customers the lower rate in this schedule, as discussed in Section X of this report.

23. The proposed revised tariff sheets regarding changes to the cooperative's service rules and regulations are reasonable and should be adopted.

B. Conclusions of Law

1. Houston County is a public utility as that term is defined in Section 3(c)(1) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1989).
2. The Commission has jurisdiction over this matter pursuant to Sections 16, 17(e), 37, and 43(a) of the PURA.
3. Houston County's filing of a statement of intent to change its rates was in accordance with Section 43(a) of PURA.
4. The public notice given by Houston County complies with the requirements of Section 43(a) of PURA and P.U.C PROC. R. 21.22(b).
5. The depreciation rates utilized by Houston County are proper under the standards set by Section 27(b) of PURA.
6. Houston County has met its burden of proof under Section 40 of PURA and established that it has a revenue requirement of \$3,795,798, of which \$2,745,300 is the base rate revenue requirement to be collected under the rates approved herein.
7. The rates recommended herein will allow Houston County to recover its reasonable operating expenses, together with a reasonable return on its invested capital, pursuant to Section 39 of PURA.

8. The rate design recommended in the examiner's report is reasonable and nondiscriminatory and complies with the ratemaking mandates of Article VI of PURA and the Commission's rules.

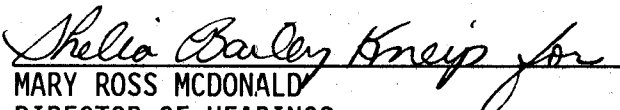
9. The rates recommended herein are just and reasonable, not unreasonably preferential, prejudicial or discriminatory, and in all other ways meet the requirements of Section 38 and 41 through 48 of PURA.

Respectfully Submitted,



MICHELLE E. DAINS
HEARINGS EXAMINER

APPROVED on this the 3rd day of July 1989:



MARY ROSS MCDONALD
DIRECTOR OF HEARINGS

DOCKET NO. 8625

PUBLIC UTILITY COMMISSION OF TEXAS
HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.

SCHEDULE NH-1
Page 1 of 1

HISTORICAL FINANCIAL DATA

(DECEMBER 31 BALANCES)	1982	1983	1984	1985	1986	1987	1988
OPERATING REVENUES	\$9,860,584	\$10,956,826	\$12,364,230	\$13,856,671	\$13,241,872	\$12,773,118	\$14,219,450
PURCHASED POWER EXPENSE	\$6,073,813	\$6,259,683	\$7,138,907	\$8,264,051	\$7,455,888	\$7,186,895	\$8,329,750
BASE RATE REVENUES	\$3,786,771	\$4,697,143	\$5,225,323	\$5,592,620	\$5,785,984	\$5,586,223	\$5,889,700
OPER. EXPENSES & OTHER	\$3,224,567	\$3,240,462	\$3,154,296	\$3,218,993	\$3,759,779	\$4,116,470	\$4,321,859
RETURN	\$562,204	\$1,456,681	\$2,071,027	\$2,373,627	\$2,026,205	\$1,469,753	\$1,567,841
INTEREST ON L-T DEBT	\$762,752	\$933,459	\$1,156,132	\$1,372,544	\$1,400,549	\$1,449,132	\$1,712,467
OPERATING MARGIN	(\$200,548)	\$523,222	\$914,895	\$1,001,083	\$625,656	\$20,621	(\$144,626)
NON-OPERATING MARGIN	\$38,260	\$45,524	\$82,810	\$164,555	\$90,984	\$85,300	\$140,191
G&T AND OTHER CAP. CREDITS	\$85,375	\$105,920	\$96,389	\$64,462	\$63,710	\$59,878	\$53,767
NET MARGIN	(\$76,913)	\$674,666	\$1,094,094	\$1,230,100	\$780,350	\$165,799	\$49,332
DEBT SERVICE	\$1,090,119	\$1,259,952	\$1,530,339	\$1,787,297	\$1,859,113	\$2,019,156	\$2,363,604
DEPRECIATION EXPENSE	\$742,603	\$822,153	\$916,885	\$1,008,667	\$1,122,207	\$1,231,876	\$1,341,380
MARGINS & EQUITIES	\$2,298,312	\$2,974,238	\$4,037,025	\$5,310,713	\$6,092,409	\$6,259,021	\$6,307,557
LONG-TERM DEBT	\$16,651,956	\$19,590,971	\$21,710,097	\$23,642,612	\$23,184,782	\$28,657,273	\$31,079,639
CAPITALIZATION	\$18,950,268	\$22,565,209	\$25,747,122	\$28,953,325	\$29,277,191	\$34,916,294	\$37,387,196
TIER	0.90	1.72	1.95	1.90	1.56	1.11	1.03
TIER W/O CAP. CREDITS	0.79	1.61	1.86	1.85	1.51	1.07	1.00
DSC	1.31	1.93	2.07	2.02	1.78	1.41	1.31
DSC W/O CAP. CREDITS	1.23	1.84	2.01	1.98	1.74	1.38	1.29
EQUITY/CAPITALIZATION	12.13%	13.10%	15.68%	18.34%	20.81%	17.93%	16.87%

1987 MEDIAN VALUES	U.S. REA MEDIAN (1)	TEXAS REA MEDIAN (2)	TEXAS MEDIAN (3)
TIER	2.36	2.38	2.38
TIER W/O G&T CREDITS	2.13	2.05	2.05
DSC	2.23	2.23	2.32
DSC W/O G&T CREDITS	2.07	2.01	2.08
EQUITY/CAPITALIZATION	39.96%	35.87%	37.72%

NOTE

- MEDIAN VALUES DERIVED FROM:
 (1) 847 REA DISTRIBUTION CO-OPS NATIONWIDE.
 (2) 66 REA DISTRIBUTION CO-OPS IN TEXAS.
 (3) 74 TOTAL DISTRIBUTION CO-OPS IN TEXAS.

KEY FINANCIAL DATA

	6/30/88	6/30/89	6/30/90	6/30/91
DEBT BALANCE	31,411,027	30,791,704	32,566,147	32,727,839
TOTAL MARGINS AND EQUITIES	6,017,453	5,999,112	8,171,392	10,348,902
TOTAL CAPITALIZATION	37,428,480	36,790,816	40,737,539	43,076,741
DEBT RATIO	0.8392	0.8369	0.7994	0.7598
EQUITY RATIO	0.1608	0.1631	0.2006	0.2402
TOTAL	1.0000	1.0000	1.0000	1.0000
EQUITY MAINTENANCE	0	-102,519	643,553	469,212
EQUITY LEVEL GROWTH	0	84,177	1,528,728	1,708,298
CAPITAL CREDITS TO BE ROTATED	0	0	0	0
INTEREST	1,578,149	1,802,451	1,916,126	1,998,836
TOTAL SOURCES REQUIRED	1,768,891	1,784,110	4,088,407	4,176,346
RETURN	1,604,207	1,541,217	3,801,668	3,801,668
INTEREST	1,578,149	1,802,451	1,916,126	1,998,836
OPERATING MARGIN	26,058	-261,235	1,885,542	1,802,832
NON OPERATING REVENUE - INTEREST	109,499	163,729	198,788	282,081
NON OPERATING REVENUE - OTHER	-4,693	0	0	0
G&T AND OTHER CAPITAL CREDITS	59,878	79,164	87,951	92,597
NET MARGIN	190,742	-18,341	2,172,281	2,177,510
RATE BASE	34,249,261	34,249,261	34,249,261	34,249,261
ROR	0.0468	0.0450	0.1110	0.1110
ROE	0.0043	-0.0435	0.2307	0.1742
WEIGHTED AVG DEBT	0.0546	0.0575	0.0604	0.0609
TIER	1.1209	0.9898	2.1337	2.0894
TIER WO CAP CREDITS	1.0829	0.9459	2.0878	2.0431
OPERATING TIER	1.0165	0.8551	1.9840	1.9019
DSC	1.3697	1.3055	2.1479	2.1351
DSC WO CAP CREDITS	1.3428	1.2728	2.1140	2.1007
OPERATING DSC	1.2959	1.2052	2.0372	1.9959

HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.

SUMMARY OF FINANCIAL PROJECTIONS

ROR:	PROJECTIONS FOR YEAR ENDING 6/30/90					PROJECTIONS FOR YEAR ENDING 6/30/91				
	10.50%	10.80%	11.10%	11.40%	SCHED.N-1 (3)	10.50%	10.80%	11.10%	11.40%	SCHED.N-1 (3)
RETURN	\$3,596,200	\$3,698,900	\$3,801,668	\$3,904,416	\$4,684,366	\$3,596,200	\$3,698,900	\$3,801,668	\$3,904,416	\$4,973,550
INTEREST ON L-T DEBT	\$1,925,800	\$1,922,200	\$1,918,656	\$1,915,073	\$2,302,412	\$2,020,800	\$2,009,700	\$1,998,727	\$1,987,712	\$2,482,489
OPERATING MARGIN	\$1,670,400	\$1,776,700	\$1,883,012	\$1,989,343	\$2,381,955	\$1,575,400	\$1,689,200	\$1,802,941	\$1,916,704	\$2,491,061
NON-OPERATING MARGIN	\$202,222	\$202,222	\$202,222	\$202,222	\$403,002	\$282,081	\$282,081	\$282,081	\$282,081	\$512,496
CAPITAL CREDITS	\$88,417	\$88,245	\$88,073	\$87,900	\$93,058	\$93,651	\$93,121	\$92,592	\$92,062	\$99,555
NET MARGIN	\$1,961,039	\$2,067,167	\$2,173,307	\$2,279,465	\$2,878,014	\$1,951,132	\$2,064,402	\$2,177,614	\$2,290,847	\$3,103,112
DEBT SERVICE	\$2,599,700	\$2,596,100	\$2,592,536	\$2,588,953	\$2,826,858	\$2,714,300	\$2,703,100	\$2,692,026	\$2,680,914	\$3,055,511
DEPRECIATION EXPENSE	\$1,474,600	\$1,474,600	\$1,474,600	\$1,474,592	\$1,632,288	\$1,571,600	\$1,571,600	\$1,571,577	\$1,571,577	\$1,778,776
MARGINS & EQUITIES	\$7,961,100	\$8,067,200	\$8,173,397	\$8,279,600	\$10,938,370	\$9,912,200	\$10,132,000	\$10,351,011	\$10,570,000	\$13,321,977
LONG-TERM DEBT	\$32,777,000	\$32,671,000	\$32,564,617	\$32,458,286	\$40,661,671	\$33,167,000	\$32,947,000	\$32,726,194	\$32,505,783	\$42,999,960
TIER	2.02	2.08	2.13	2.19	2.25	1.97	2.03	2.09	2.15	2.25
MODIFIED TIER (1)	1.97	2.03	2.09	2.14	2.21	1.92	1.98	2.04	2.11	2.21
OPERATING TIER (2)	1.87	1.92	1.98	2.04	2.03	1.78	1.84	1.90	1.96	2.00
DSC	2.06	2.10	2.15	2.19	2.41	2.04	2.09	2.14	2.18	2.41
MODIFIED DSC (1)	2.03	2.07	2.11	2.16	2.38	2.01	2.05	2.10	2.15	2.38
OPERATING DSC (2)	1.95	1.99	2.04	2.08	2.23	1.90	1.95	2.00	2.04	2.21
EQUITY/CAPITALIZATION	19.54%	19.80%	20.06%	20.32%	21.20%	23.01%	23.52%	24.03%	24.54%	23.65%
GEN.FUNDS AS A % OF TOTAL UTILITY PLANT	6.00%	6.00%	6.00%	6.00%	15.00%	6.00%	6.00%	6.00%	6.00%	15.00%

NOTES: (1) EXCLUDES G&T AND OTHER CAPITAL CREDITS FROM NET MARGIN.

(2) EXCLUDES CAPITAL CREDITS AND NON-OPERATING MARGINS FROM NET MARGIN.

(3) SCHEDULE N-1 results for 6/30/90 are an average of numbers from calendar years 1989 and 1990.

Similarly, SCHEDULE N-1 results for 6/30/91 are an average of the numbers from calendar years 1990 and 1991.

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Docket No. 8625
Attachment no.3

PUBLIC UTILITY COMMISSION OF TEXAS

SCHEDULE II

HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.
DOCKET NO. 8625

OPERATIONS AND MAINTENANCE (EXCLUDING FUEL AND PURCHASED POWER)

DESCRIPTION	(COLUMN 1) TEST YEAR PER BOOKS	(COLUMN 2) COMPANY ADJUSTMENTS TO TEST YEAR	(COLUMN 3) COMPANY REQUESTED TEST YEAR	(COLUMN 4) STAFF ADJUSTMENTS TO REQUEST	(COLUMN 5) STAFF RECOMMENDED TEST YEAR
NOT ADJUSTED	\$ 236,539	\$ 0	\$ 236,539	\$ 0	\$ 236,539
MAINTENANCE	864,522	(145,157)	719,365	0	719,365
ROLL	1,014,619	4,790	1,019,409	(13,897)	1,005,512
EMPLOYEE BENEFITS	242,074	23,779	265,853	(8,368)	257,485
PENSIONERS COMP	11,359	6,271	17,630	(146)	17,484
LIAB INS	107,091	(28,374)	78,717	0	78,717
FREELIA INS	45,093	(8,988)	36,105	0	36,105
LEGISLATIVE ADVOC	36	(36)	0	0	0
LEGAL CASE	0	12,500	12,500	(3,153)	9,347
REGULATORY ASSESSMENT	22,731	(22,731)	0	0	0
STRIKE RELATED	0	0	0	(7,917)	(7,917)
COLLECTIBLE EXPENSE	81,492	25,533	107,025	(16,373)	90,652
TOTAL OPERATIONS AND MAINTENANCE	\$ 2,625,556	\$ (132,413)	\$ 2,493,143	\$ (49,854)	\$ 2,443,289

STAFF'S ADJUSTMENT TO TEST YEAR PER BOOKS IS DERIVED BY ADDING
THE AMOUNT IN COLUMN 2 TO THE AMOUNT IN COLUMN 4

PUBLIC UTILITY COMMISSION OF TEXAS
HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.

REVISED
SCHEDULE 1
PAGE 1 OF 1

STAFF-PROPOSED REVENUE REQUIREMENTS

(1) CUSTOMER CLASS	(2) PRESENT REVENUE (\$)	(3) STAFF COS (UNIFORM ROR) (\$)	(4) STAFF ROR (%)	(5) REVENUE CHANGE (\$)	(6) PERCENT CHANGE (%)	(7) STAFF-PROPOSED REVENUE ADJUSTMENT (\$)	(8) STAFF-PROPOSED REVENUE ADJUSTMENT (%)	(9) STAFF-PROPOSED REVENUE REQUIREMENT (\$)	(10) ADJUSTED ROR (%)	(11) RELATIVE ROR INDEX (%)
RESIDENTIAL	8,936,598	10,805,108	11.10	1,868,510	20.91	1,868,510	20.91	10,805,108	11.10	1.00
SEASONAL	858,694	1,388,720	11.10	530,026	61.72	270,052	31.45	1,128,746	5.23	0.47
SM-COMM	713,745	752,272	11.10	38,527	5.40	94,778	13.28	808,523	14.75	1.33
LARGE POWER-1	1,041,326	1,141,129	11.10	99,803	9.58	181,871	17.47	1,223,197	16.63	1.50
LARGE POWER-2	1,208,935	1,398,416	11.10	189,481	15.67	284,759	23.55	1,493,694	17.08	1.54
SEC LIGHTS	334,680	353,633	11.10	18,953	5.66	45,329	13.54	380,009	14.03	1.26
TOTAL	13,093,978	15,839,278	11.10	2,745,300	20.97	2,745,300	20.97	15,839,278	11.10	1.00

REVENUE DEFICIENCY = (Column 3 - Column 2) = 2,745,300

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DRY # _____
GC _____ : X # 4B
DATE _____ BY _____

Docket No. 8625
Attachment No. 5

Public Commission of Texas
Houston County Electric Cooperative, Inc.
Docket No. 8625
Residential Rate Comparison

Schedule II
Page 1 of 1

Electric Utility	Energy Class	Summer	Winter
Bowie-Cass		6.7500	5.1100
Cherokee County		7.7220	7.7220
Deep East Texas	First 1000Kwh	6.5920	6.5920
	Over 1000 kwh	6.5920	5.0920
Farmers	First 1000 Kwh	7.6286	7.6286
	Over 1000 Kwh	7.6286	5.5095
HOUSTON COUNTY-CURRENT	First 200 Kwh	9.4500	9.4500
	Over 200 Kwh	7.4500	7.4500
Jasper-Newton	First 500 Kwh	7.0700	7.0700
	Over 500 Kwh	6.0600	5.3100
Panola-Harrison	First 77 Kwh	5.1900	5.1900
	Next 13 Kwh	3.5000	3.5000
	Next 160 Kwh	2.5000	2.5000
	Next 550 Kwh	2.0000	2.0000
	Next 700 Kwh	1.5000	1.5000
	Over 1500 Kwh	1.1000	1.1000
Rusk County		6.3340	6.3340
Sam Houston	First 500 Kwh	6.8200	6.4300
<i>Uachur</i>	Over 500 Kwh	6.8200	5.9300
Upshear-Rural		6.2876	6.2876
Wood County		7.0670	7.0670
Average		5.8125	5.4654
HOUSTON COUNTY-PROPOSED	First 200 Kwh	11.2000	11.2000
	Over 200 Kwh	9.2000	9.2000

Public Commission of Texas
Houston County Electric Cooperative, Inc.
Docket No. 8625
Small Commercial Rate Comparison

Schedule III
Page 1 of 1

Electric Utility	Energy Class	Summer	Winter
Bowie-Cass		6.6500	5.9300
Cherokee County		6.9030	6.9030
Deep East Texas	First 1000Kwh	7.4860	7.4860
	Next 2000 kwh	7.0790	7.0790
	Over 3000 Kwh	5.9070	5.9070
Farmers	First 5000 Kwh	8.8440	8.8440
	Over 5000 Kwh	6.8440	6.8440
HOUSTON COUNTY-CURRENT	First 400 Kwh	9.4500	9.4500
	Over 400 Kwh	7.7200	7.7200
Jasper-Newton	First 500 Kwh	7.7800	7.7800
	Over 500 Kwh	6.1700	5.4000
Panola-Harrison	First 63 Kwh	6.2500	6.2500
	Nex 36 Kwh	4.5000	4.5000
	Next 900 Kwh	3.0000	3.0000
	Next 2000 Kwh	2.5000	2.5000
	Over 3000 Kwh	2.0000	2.0000
Rusk County		6.5660	6.5660
Sam Houston	First 500 Kwh	6.5200	6.5200
Upshur-Rural <i>Upshur Rural</i>		6.2876	6.2876
Wood County	First 1500 Kwh	6.6100	6.6100
	Over 1500 Kwh	5.8200	5.8200
Average		6.2327	6.1617
HOUSTON COUNTY-PROPOSED	First 400 Kwh	11.2000	11.2000
	Over 400 Kwh	7.7200	7.7200
		9.2	9.2

Public Utility Commission of Texas
Houston County Electric Cooperative, Inc.
Docket No. 8625
Customer Charge Comparison

Schedule VII
Page 1 of 1

Electric Utility	Residential Service		Commercial Service	
	Single-Phase Customer Charge	Three-Phase Customer Charge	Single-Phase Customer Charge	Three-Phase Customer Charge
Bowie-Cass	\$7.25	--	\$12.00	\$12.00
Cherokee County	\$7.50	--	\$15.00	\$20.00
Deep East Texas	\$6.50	\$6.50	\$10.00	--
Farmers	\$7.00	\$18.50	\$10.00	\$18.50
HOUSTON COUNTY	\$8.00	\$8.00	\$8.00	\$12.00
Jasper-Newton	\$8.00	--	\$8.00	\$8.00
Panola-Harrison	\$0.00	\$0.00	\$0.00	\$0.00
Rusk County	\$7.50	\$7.50	\$12.50	\$12.50
Sam Houston	\$8.50	\$8.50	\$9.75	\$26.50
Upshur-Rural	\$7.50	\$7.50	\$7.50	\$10.00
Wood County	\$8.00	--	\$15.00	\$15.00
AREA-WIDE AVERAGE	\$6.89	\$8.07	\$9.80	\$13.45

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Docket No. 8625
Attachment No. 8

Proposed Service Rule Section No.	Page No.	Pres. Policy Bulletin Replaced	Change	Explanation
(a)	(b)	(c)	(d)	(e)
1	6	N/A	Addition of "Introduction" section	To provide explanation of purpose of rules and that they are approved by the Commission, and are subject to change from time-to-time; also to broaden non-discrimination statement
2	6	N/A	Addition of "Definitions" section	To provide clarity to terms used throughout the Rules and Regulations
3	7	N/A	Addition of "Maintenance and Location of Records" section	Conformity to Substantive Rules
7(a-5)	9	N/A	Information provided to customers	Conformity to Substantive Rules
8(c-1,2,3)	12	N/A	Additional reasons insufficient to refuse service	Conformity to Substantive Rules
9(a-2)	13	N/A	Definition of "Applicant"	Conformity to Substantive Rules
9(a-4)	14	N/A	Reasons for residential deposit & amount	Conformity to Substantive Rules
9(a-5)	14	N/A	Information provided about deposits	Conformity to Substantive Rules
9(c-1A)	15	P.B. 103	Provisions for new or additional deposit	Conformity to Substantive Rules
9(c-1A)	15	P.B. 103	Provisions for new or additional Commercial Deposits	Conformity to Substantive Rules
10(c-1A)	21	Switchover Tariff	Addition of written request by consumer	To provide improved administrative control of this very sensitive area
10(c-1D2)	21	Switchover Tariff	Charge for removal of idle facilities	To require entity requesting change to absorb cost incurred
10(c-1E)	21	Switchover Tariff	Cash payment	To assure payment to Co-op
10(d-4)	23	P.B. 95	Explanation of construction cost options to consumer	Conformance to Substantive Rules
11(a)	23	P.B. 88	Change in due date from 15 to 16 days	Conformance to Substantive Rules
11(c)	24	N/A	Addition of explanation of "Payment Arrangements"	Conformance to Substantive Rules
11(e)	24	N/A	Addition of "Overbilling and Underbilling"	Conformance to Substantive Rules
11(f-1)	25	P.B. 89A	Mailing of card where meter reader unable to read	Conformance to Substantive Rules
11(f-2)	25	N/A	Cooperative to read if reading not submitted for (3) months	Conformance to Substantive Rules
11(g-2)	25	P.B. 89D	Provision for calculating average usage	Conformance to Substantive Rules

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Attachment No. 9
Docket No. 8625
Schedule L-2
Page 3 of 4

Proposed Service Rule Section No.	Page No.	Pres. Policy Bulletin Replaced	Change	Explanation
(a)	(b)	(c)	(d)	(e)
11(h)	26	N/A	Addition of "Notification of Alternative Payment Plans"	Conformance to Substantive Rules
12(a)	27	P.B. 88	Change disconnect date from 22 to 26 days and change disconnect notice from 7 to 10 days	Conformance to Substantive Rules
12(c-1)	29	P.B. 88	Posting notification of disconnection for dangerous conditions	Conformance to Substantive Rules
12(d)	29	N/A	Addition of "Disconnection Prohibited" Reasons	Conformance to Substantive Rules
12(h)	30	N/A	Addition of "Disconnection To Energy Assistance Guarantees"	Conformance to Substantive Rules
12(i)	31	N/A	Addition of "Disconnection During During Extreme Weather"	Conformance to Substantive Rules
12(k)	31	N/A	Addition of "Disconnection of Master-Metered Apartments"	Conformance to Substantive Rules
13(f)	34	P.B. 8	Expanded procedures for dealing with meter tampering and special disconnect fee of \$55	To provide proper control and procedural guidance in dealing with suspected meter tampering and recovering of unusual cost incurred.
15(a)	36	N/A	Addition of "Location of Meters"	Conformance to Substantive Rules
15(b)	37	N/A	Addition of "Meter Testing Facilities And Equipment"	Conformance to Substantive Rules
15(c)	38	N/A	Addition of "Accuracy Requirements of Meters"	Conformance to Substantive Rules
16	39	Several	Service Rule itemizing frequently used service charges and other special charges	To provide in one place, a quick reference to service charges
Appendix A	1	Equity Management Policy & Capital Credits Policy	New Policy Bulletin to Address Patronage Capital Issue	To Consolidate the major parts of the two existing policies, to eliminate conflicts between the two policies, and to provide clarity of intent. The basic thrust is unchanged.

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Schedule L-2
Page 4 of 4

APPLICATION OF HOUSTON COUNTY
ELECTRIC COOPERATIVE, INC. FOR
AUTHORITY TO CHANGE RATES

§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

In a public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled application was processed in accordance with applicable statutes and rules by an examiner who prepared and filed a report containing Findings of Fact and Conclusions of Law.

The Examiner's Report is ADOPTED, with the following modifications, and incorporated by reference into this Order. Accordingly, the Commission issues the following Order:

- A. Finding of Fact Nos. 12, 14, 16, 17, 18, 19 and 21 are AMENDED to read as follows:

12. Houston County has total invested capital of \$34,195,885, the components of which are:

Plant in Service	\$40,939,182
Accumulated Depreciation	(7,669,779)
Net Plant in Service	\$33,269,403
Construction Work in Progress	-0-
Working Cash Allowance	595,962
Materials and Supplies	374,850
Prepayments	100,925
LESS:	
Customer Deposits	145,255
TOTAL INVESTED CAPITAL	\$34,195,885

14. A rate of return of 9.1 percent, which would provide an annual dollar return of \$3,111,826, will allow the Cooperative to improve its financial condition and is therefore a reasonable rate of return.

16. The following cost of service is reasonable for Houston County:

Purchased Power	\$ 8,090,822
Operation and Maintenance	2,439,361
Depreciation	1,347,581
Interest on Customer Deposits	9,224
Other Taxes	216,003
Return	3,111,826
TOTAL	\$15,214,817

17. The adjustments to Houston County's cost of service study attached to this Order are appropriate and reasonable and should be adopted.

18. The revenue requirement figures reflected in the attachment to this Order are reasonable and should be adopted.

19. The rate design reflected in the attachment to this Order, which is a flat rate structure, is reasonable and should be adopted.

21. The revenue allocation and rate design reflected in the attachment to this Order are fair and reasonable and should be adopted.

B. Conclusion of Law Nos. 6 and 8 are **AMENDED** to read as follows:

6. Houston County has not met its burden of proof under Section 40 of PURA. It has only established that it has a revenue requirement of \$15,214,818, of which \$15,150,230 is the base rate revenue requirement to be collected under the rates approved herein.

8. The rate design reflected in the attachment to this Order is reasonable and nondiscriminatory and complies with the ratemaking mandates of Article VI of PURA and the Commission's rules.

The Commission further issues the following Order:

1. The application of Houston County Electric Cooperative, Inc. (Houston County) is hereby **GRANTED** in part and **DENIED** in part, as reflected by the terms of this Order.
2. Within 20 days after the date of this Order, Houston County **SHALL** file revised tariff sheets in accordance with the directives of this Order, and **SHALL** serve one copy upon each of the intervenors and the general counsel. Not later than 10 days after the date of the tariff filing by the cooperative, the intervenors and the general counsel shall file their comments recommending approval or rejection of the individual sheets of the tariff proposal. No later than 15 days after the date of the tariff filing by Houston

County, Houston County SHALL file in writing any responses to the previously filed comments of the intervenors and general counsel. The Hearings Division SHALL by letter approve, modify or reject each tariff sheet, effective the date of the letter, based upon the materials submitted to the Commission under the procedures established herein. The tariff sheets shall be deemed approved and shall become effective upon the expiration of 20 days after the date of filing, in the absence of prior written notification of approval or rejection by the Hearings Division. In the event that any sheets are rejected, Houston County shall file proposed revisions of those sheets in accordance with the Hearings Division letter within 10 days after that letter, with the procedures set out above again to apply.

3. The revised and approved rates shall be charged for service in all unincorporated areas wherein this Commission exercises its exclusive original jurisdiction. Said rates may be charged only for service rendered in the above areas after the tariff approval date. Should the tariff approval date fall within Houston County's billing period, Houston County shall be authorized to prorate each customer's bill to reflect that customer's charge, demand charge, and daily energy consumption at the appropriate new rates.
4. Within six months from the date of this Order, Houston County SHALL file a report with the Operations Review Division of the Commission reporting the progress it is making in relieving its poor financial situation and its progress in obtaining a loan from the Rural Electrification Administration (REA).
5. Within six months from the time Houston County obtains its anticipated loan from the REA, it SHALL report to the Operations Review Division of the Commission the progress it is making in utilizing the loan funds to make system-wide improvements.

6. Motions and requests for relief not granted by the Commission or by examiner's order are DENIED for lack of merit.

SIGNED AT AUSTIN, TEXAS on this the 30th day of August 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: *Marta Greytok*
MARTA GREY TOK

SIGNED: *William B. Cassin*
WILLIAM B. CASSIN

I respectfully dissent. Section 43(d) of PURA states that if a regulatory authority does not make a final determination concerning a schedule of rates prior to expiration of the period of suspension, the schedule shall be deemed to have been approved by the regulatory authority. However, the statute also states that the approval is subject to the authority of the regulatory authority to continue a hearing in progress. If this language is to be given any meaning, which in my opinion it must, the Commission has the power to set a rate incorporating the 9.1 percent rate of return, remand the case for further hearing regarding the results of the management audit and such other evidence as may be relevant, and after consideration of such evidence modify or amend the rate incorporating the 9.1 percent rate of return, if appropriate. I believe such a procedure better protects the consumers and fulfills our duty to ensure that only just and reasonable rates are charged by this utility.

SIGNED: *J. Campbell*
JO CAMPBELL

ATTEST:

Mary Ross McDonald
MARY ROSS McDONALD
SECRETARY OF THE COMMISSION

PUBLIC UTILITY COMMISSION OF TEXAS

 HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.
 DOCKET NO. 8625
 REVENUE REQUIREMENT

SCHEDULE I

DESCRIPTION	(COLUMN 1) TEST YEAR PER BOOKS	(COLUMN 2) COMPANY ADJUSTMENTS TO TEST YEAR	(COLUMN 3) COMPANY REQUESTED TEST YEAR	(COLUMN 4) COMMISSION ADJUSTMENTS TO REQUEST	(COLUMN 5) COMMISSION TEST YEAR
PURCHASED POWER	\$ 7,868,854	\$ 221,968	\$ 8,090,822	\$ 0	\$ 8,090,822
OPERATIONS AND MAINTENANCE	2,625,556	(132,413)	2,493,143	(53,782)	2,439,361
DEPRECIATION	1,287,991	59,590	1,347,581	0	1,347,581
INTEREST ON CUSTOMERS DEPOSITS	5,618	3,097	8,715	509	9,224
TAXES OTHER THAN INCOME TAXES	193,833	27,851	221,684	(5,681)	216,003
RETURN	1,690,739	2,121,123	3,811,862	(700,036)	3,111,826
REVENUE REQUIREMENT	\$ 13,672,591	\$ 2,301,216	\$ 15,973,807	\$ (756,990)	\$ 15,214,817

COMMISSION'S ADJUSTMENT TO TEST YEAR PER BOOKS IS DERIVED BY ADDING
 THE AMOUNT IN COLUMN 2 TO THE AMOUNT IN COLUMN 4

PUBLIC UTILITY COMMISSION OF TEXAS

SCHEDULE 11

HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.

DOCKET NO. 8625

OPERATIONS AND MAINTENANCE (EXCLUDING FUEL AND PURCHASED POWER)

DESCRIPTION	(COLUMN 1) TEST YEAR PER BOOKS	(COLUMN 2) COMPANY ADJUSTMENTS TO TEST YEAR	(COLUMN 3) COMPANY REQUESTED TEST YEAR	(COLUMN 4) COMMISSION ADJUSTMENTS TO REQUEST	(COLUMN 5) COMMISSION TEST YEAR
O&M NOT ADJUSTED	\$ 236,539	\$ 0	\$ 236,539	\$ 0	\$ 236,539
MAINTENANCE	864,522	(145,157)	719,365	0	719,365
PAYROLL	1,014,619	4,790	1,019,409	(13,897)	1,005,512
EMPLOYEE BENEFITS	242,074	23,779	265,853	(8,368)	257,485
WORKMENS COMP	11,359	6,271	17,630	(146)	17,484
GEN LIAB INS	107,091	(28,374)	78,717	0	78,717
UMBRELLA INS	45,093	(8,988)	36,105	0	36,105
LEGISLATIVE ADVOC	36	(36)	0	0	0
RATE CASE	0	12,500	12,500	(3,153)	9,347
TPUC ASSESSMENT	22,731	(22,731)	0	0	0
LEGAL/STRIKE RELATED	0	0	0	(7,917)	(7,917)
UNCOLLECTIBLE EXPENSE	81,492	25,533	107,025	(20,301)	86,724
TOTAL OPERATIONS AND MAINTENANCE	\$ 2,625,556	\$ (132,413)	\$ 2,493,143	\$ (53,782)	\$ 2,439,361

COMMISSION'S ADJUSTMENT TO TEST YEAR PER BOOKS IS DERIVED BY ADDING THE AMOUNT IN COLUMN 2 TO THE AMOUNT IN COLUMN 4

PUBLIC UTILITY COMMISSION OF TEXAS

SCHEDULE III

 HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.
 DOCKET NO. 8625

SUMMARY OF TAXES OTHER THAN INCOME TAXES

DESCRIPTION	(COLUMN 1) TEST YEAR PER BOOKS	(COLUMN 2) COMPANY ADJUSTMENTS TO TEST YEAR	(COLUMN 3) COMPANY REQUESTED TEST YEAR	(COLUMN 4) COMMISSION ADJUSTMENTS TO REQUEST	(COLUMN 5) COMMISSION TEST YEAR
TEXAS AD VALOREM TAXES	\$ 109,233	\$ 2,776	\$ 112,009	\$ (3,550)	\$ 108,459
PAYROLL TAXES	84,600	(1,553)	83,047	(866)	82,181
NON REVENUE RELATED TAXES	\$ 193,833	\$ 1,223	\$ 195,056	\$ (4,416)	\$ 190,640
TEXAS PUC ASSESSMENT	\$ 0	\$ 26,628	\$ 26,628	\$ (1,265)	\$ 25,363
REVENUE RELATED TAXES OTHER THAN INCOME TAXES	\$ 0	\$ 26,628	\$ 26,628	\$ (1,265)	\$ 25,363
SUMMARY OF OTHER TAXES OTHER THAN INCOME TAXES					
NON REVENUE RELATED TAXES	\$ 193,833	\$ 1,223	\$ 195,056	\$ (4,416)	\$ 190,640
REVENUE RELATED TAXES	0	26,628	26,628	(1,265)	25,363
TOTAL TAXES OTHER THAN INCOME TAXES	\$ 193,833	\$ 27,851	\$ 221,684	\$ (5,681)	\$ 216,003

COMMISSION'S ADJUSTMENT TO TEST YEAR PER BOOKS IS DERIVED BY ADDING
 THE AMOUNT IN COLUMN 2 TO THE AMOUNT IN COLUMN 4

PUBLIC UTILITY COMMISSION OF TEXAS

SCHEDULE IV

HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.

DOCKET NO. 8625

INVESTED CAPITAL

DESCRIPTION	(COLUMN 1) TEST YEAR PER BOOKS	(COLUMN 2) COMPANY ADJUSTMENTS TO TEST YEAR	(COLUMN 3) COMPANY REQUESTED TEST YEAR	(COLUMN 4) COMMISSION ADJUSTMENTS TO REQUEST	(COLUMN 5) COMMISSION TEST YEAR
PLANT IN SERVICE	\$ 40,939,182	\$ 0	\$ 40,939,182	0	\$ 40,939,182
ACCUMULATED DEPRECIATION	(7,669,779)	0	(7,669,779)	0	(7,669,779)
NET PLANT IN SERVICE	33,269,403	0	33,269,403	0	33,269,403
WORKING CASH ALLOWANCE	764,914	470	765,384	(169,422)	595,962
MATERIALS AND SUPPLIES	374,850	0	374,850	0	374,850
PREPAYMENTS	100,925	0	100,925	0	100,925
CUSTOMERS DEPOSITS	(145,255)	0	(145,255)	0	(145,255)
TOTAL INVESTED CAPITAL	\$ 34,364,837	\$ 470	\$ 34,365,307	(169,422)	\$ 34,195,885
RATE OF RETURN			0.110922	-0.019922	0.091000
RETURN			\$ 3,811,862	(700,036)	\$ 3,111,826

COMMISSION'S ADJUSTMENTS TO TEST YEAR PER BOOKS IS DERIVED BY ADDING THE AMOUNT IN COLUMN 2 TO THE AMOUNT IN COLUMN 4

PUBLIC UTILITY COMMISSION OF TEXAS
HOUSTON COUNTY ELECTRIC COOPERATIVE, INC.

FINAL ORDER
SCHEDULE I
PAGE 1 OF 1

STAFF-PROPOSED REVENUE REQUIREMENTS

(1) CUSTOMER CLASS	(2) PRESENT REVENUE	(3) STAFF COS (UNIFORM ROR)	(4) STAFF ROR	(5) REVENUE CHANGE	(6) PERCENT CHANGE	(7) STAFF-PROPOSED REVENUE ADJUSTMENT	(8) STAFF-PROPOSED REVENUE ADJUSTMENT	(9) STAFF-PROPOSED REVENUE REQUIREMENT	(10) ADJUSTED ROR	(11) RELATIVE ROR INDEX
	(\$)	(\$)	(%)	(\$)	(%)	(\$)	(%)	(\$)	(%)	(%)
RESIDENTIAL	8,936,598	10,316,426	9.10	1,379,828	15.44	1,379,828	15.44	10,316,426	9.10	1.00
SEASONAL	858,694	1,299,327	9.10	440,633	51.31	202,271	23.56	1,060,965	3.72	0.41
SM-COMM	713,745	721,259	9.10	7,514	1.05	59,089	8.28	772,834	12.45	1.37
LARGE POWER-1	1,041,326	1,111,312	9.10	69,986	6.72	145,232	13.95	1,186,558	14.17	1.56
LARGE POWER-2	1,208,935	1,366,420	9.10	157,485	13.03	244,842	20.25	1,453,777	14.58	1.60
SEC LIGHTS	334,680	335,486	9.10	806	0.24	24,989	7.47	359,669	11.79	1.30
TOTAL	13,093,978	15,150,230	9.10	2,056,252	15.70	2,056,252	15.70	15,150,230	9.10	1.00

REVENUE DEFICIENCY = (Column 3 - Column 2) = 2,056,252

BASE RATE REVENUE ALLOCATION

DESCRIPTION	RESIDENTIAL	SEASONAL	SM-COMM	LARGE POWER-1	LARGE POWER-2	SEC LIGHTS	TOTAL
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
Depreciation & Amortization	955,923	177,261	60,629	57,158	60,723	35,887	1,347,581
Operation & Maintenance	1,735,427	374,003	116,772	98,578	78,248	36,335	2,439,362
Purchased Power	5,307,587	325,766	395,974	811,225	1,073,551	176,719	8,090,822
Interest on Customer Deposits	6,903	1,827	395	66	4	30	9,224
Taxes	152,397	30,087	10,169	9,662	8,904	4,784	216,003
Return on Rate Base	2,206,614	403,198	140,088	135,007	145,013	81,905	3,111,826
Total Revenue Requirement	10,364,851	1,312,142	724,027	1,111,696	1,366,442	335,660	15,214,818
Miscellaneous Revenue	(48,425)	(12,815)	(2,768)	(384)	(22)	(174)	(64,588)
Interest Income	0	0	0	0	0	0	0
Capital Credits	0	0	0	0	0	0	0
Base Rate Revenue Requirement	10,316,426	1,299,327	721,259	1,111,312	1,366,420	335,486	15,150,230

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RATE BASE ALLOCATION

DESCRIPTION	RESIDENTIAL	SEASONAL	SM-COMM	LARGE POWER-1	LARGE POWER-2	SEC LIGHTS	TOTAL
	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)	(\$)
Gross Plant In Service	29,053,966	5,356,461	1,840,559	1,744,261	1,862,163	1,081,772	40,939,182
Accumulated Depreciation	(5,439,341)	(1,011,723)	(345,200)	(324,547)	(343,882)	(205,086)	(7,669,779)
Retirement Work	0	0	0	0	0	0	0
Net Plant In Service	23,614,625	4,344,738	1,495,359	1,419,714	1,518,281	876,686	33,269,403
CWIP	0	0	0	0	0	0	0
Cash Working Capital	404,940	52,528	28,897	44,648	53,685	11,264	595,962
Materials and Supplies	266,026	49,045	16,853	15,971	17,050	9,905	374,850
Prepayments	71,625	13,205	4,537	4,300	4,591	2,667	100,925
Customer Deposits	(108,707)	(28,770)	(6,214)	(1,036)	(60)	(468)	(145,255)
Other	0	0	0	0	0	0	0
	1,690,533	0	0	0	0	0	0
Total Rate Base	24,248,508	4,430,747	1,539,432	1,483,597	1,593,547	900,054	34,195,885

October 23, 1989

San Patricio requests a permanent rate reduction for its Small General Service Rate for the summer consumption months of June - September. This rate reduction was approved on a temporary basis for 1988 in Docket No. 8116. The Commission approved the rate decrease for 1989 only, finding that the Cooperative did not meet its burden of proof to establish that the permanent rate decrease would not cause significant harm to the Cooperative's financial integrity.

- [1] RATEMAKING--RATE DESIGN--ELECTRIC--BASIC SERVICE--ENERGY
RATEMAKING--RATE DESIGN--ELECTRIC--INCENTIVE AND OPTIONAL RATES
The Cooperative established the need for a temporary rate reduction to its Small General Service Rate for the summer consumption months by showing the beneficial impact the lower rate had on lowering the number of switchover requests; and the minimal impact that the temporary rate reduction would have on the short term financial integrity of the Cooperative. (p. 901)
- [2] RATEMAKING--COST OF SERVICE--GENERAL THEORY
PROCEDURE--EVIDENCE AND BURDEN OF PROOF
The Cooperative did not sustain its burden of proof to support the permanent rate reduction for the summer consumption months because it failed to show that the proposed rate reduction would not have significant long-term harmful effects on the financial integrity of the Cooperative. (p. 904)
- [3] JURISDICTION--GENERAL POWERS
The Commission cannot issue a final order that approves a rate conditioned on meeting certain financial indicators in the future. The Cooperative's request for approval of a permanent rate reduction for the years following 1989 conditioned on the Cooperative meeting certain TIER and DSC ratios for 1989 and 1990 cannot be approved in a final order since APTRA requires the order to dispose of all issues in the application. (p. 907)

PETITION OF SAN PATRICIO
ELECTRIC COOPERATIVE, INC. TO
DECREASE GENERAL SERVICE RATE

§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

EXAMINER'S REPORT

I. Introduction

This petition involves a request by San Patricio Electric Cooperative, Inc. ("San Patricio" or "Cooperative") to decrease permanently the Small General Service Rate by \$.01 per kilowatt hour ("kwh") for the summer consumption months of June through September in 1989 and June through September in subsequent years. The Cooperative's request for the rate reduction for the summer consumption months of 1989 was approved on an interim basis by agreement of all parties. General Counsel recommended approval of the temporary reduction for the summer consumption months of 1989, but opposed the permanent reduction for future summer consumption months.

II. Factual and Procedural Background

A. Factual Background

San Patricio is a member-owned retail electric distribution cooperative that purchases all of its electricity in bulk at wholesale. The Cooperative does not generate electricity and does not purchase fuel directly used in the generation of energy. Its fuel costs are passed through to its ratepayers by a fuel adjustment clause in the Cooperative's wholesale contract. The Cooperative is managed by a Board of Directors elected by its membership at annual meetings.

The Cooperative serves nine counties north and northwest of Corpus Christi, Texas. In thirty-seven percent (37%) of its service area, the Cooperative is dual certified with Central Power & Light Company ("CP&L"). Of its customer

base, forty-three percent (43%) of the Cooperative's customers reside within the dual certified service area. The dual certified area is more densely populated and has a higher growth rate than the Cooperative's single certified service area.

In May 1988, the Cooperative filed an application with the Public Utility Commission ("Commission") and the affected municipalities of Beeville and San Patricio, Texas requesting a temporary reduction of \$.01 per kwh to the Small General Service Rate for the summer billing months of June, July, and August 1988. See, Application of San Patricio Electric Cooperative, Inc. for Authority to Implement a Temporary Reduction in the Small General Service Rate, Docket No. 8116, ___ P.U.C. BULL. ___, (September 6, 1988) ("Docket No. 8116"). The Commission approved implementation of the temporary rate reduction.

B. Procedural Background

On April 20, 1989, the Cooperative filed a petition with the Commission and the affected municipalities of Beeville and San Patricio, Texas requesting a permanent decrease of \$.01 per kwh for its Small General Service Rate for the summer consumption months of June, July, August, and September 1989 and future summer consumption months. Hearings Examiner Michelle Dains was assigned to process the petition. The effective date of the proposed rate reduction was suspended for 150 days until October 22, 1989.

On May 16, 1989, a prehearing conference was held with Mr. Campbell McGinnis appearing on behalf of the Cooperative and Ms. Paula Mueller on behalf of General Counsel. At the prehearing conference, evidence was admitted related to the Cooperative's request for interim approval of the rate reduction

for the consumption months of June through September 1989. General Counsel had no objection to the Cooperative's request for interim approval, withholding its final recommendation until a later time.

On May 17, 1989, the rate reduction was approved on an interim basis for the consumption months of June, July, August, and September 1989.

General Counsel filed the testimony of two Commission Staff witnesses that opposed the proposed rate reduction on a permanent basis. As a result, the Cooperative requested a hearing on the merits.

On July 10, 1989, the hearing on the merits was held. Mr. Earnest Casstevens appeared on behalf of the Cooperative and Mrs. DeAnn Walker appeared on behalf of General Counsel. There were no other participants or intervenors. The hearing lasted one day with Examiner Dains presiding.

A briefing schedule was established at the close of the hearing with all parties agreeing to the schedule. On July 24, 1989, closing briefs were filed. On July 31, 1989, all parties were to file reply briefs. General Counsel timely filed its reply brief. San Patricio filed its reply brief on August 4, 1989. General Counsel filed a motion to strike the Cooperative's reply brief alleging that the brief was filed untimely and improperly contained responses to General Counsel's reply brief. Examiner Dains granted the motion.

On August 29, 1989, the docket was reassigned to the undersigned Administrative Law Judge ("ALJ"). The ALJ has read the record in this docket and serves as a lawful replacement for the previously assigned Examiner under § 15 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1989) ("APTRA").

The Commission's jurisdiction in this docket ends on Monday, October 23, 1989.

III. Jurisdiction

San Patricio generates and transmits electricity, and, therefore, is a "public utility" as defined in § 3(c)(1) of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1989) ("PURA"). The Commission has jurisdiction over this petition pursuant to §§ 16(a), 17(e), 37, and 43(a) of PURA.

IV. Positions of Parties, Testimony, and Evidence

A. Synopsis

This docket involves two issues: (1) whether the Cooperative's request for a rate reduction for the summer consumption months of June, July, August, and September 1989 should be approved; and, (2) whether the Cooperative's proposed rate reduction should be made permanent for all future summer consumption months. The Cooperative and General Counsel agree that the rate reduction for the summer consumption months in 1989 should be approved. The parties disagree on the second issue regarding approval of the reduction on a permanent basis.

The positions of the parties, testimony, and evidence adduced at the hearing will be discussed separately for each issue in this section.

B. Temporary Rate Reduction for Summer 1989

San Patricio and General Counsel agree that the proposed \$.01 per kwh rate reduction for the Small General Service rate for the consumption months of June through September 1989 should be approved. Both parties cited two rationales in support of the proposed temporary rate reduction. First, the rate reduction would likely prevent or diminish erosion of the customer base in the dual certified service areas. Second, the proposed reduction would only have a minimal impact on the financial integrity of the Cooperative on a short term basis. Each of these reasons will be presented separately.

1. Customer Base Erosion

The Cooperative's position. On behalf of the Cooperative, Mr. Calvin Fagan, President and Interim General Manager, testified that the Cooperative historically has experienced a high number of switchover requests from its Small General Service customers. This class of customers primarily consists of residential customers with all-electric homes. In the Spring of 1988, the Cooperative experienced a large number of requests from its Small General Service customers requesting switchovers to CP&L. See, Table 1 below listing the number of switchovers.

At that time, the Board of Directors believed that it needed to respond quickly to eliminate or to minimize erosion of the Cooperative's customer base. The Board of Directors agreed to create an incentive-type program to retain its residential customers by proposing a \$.01 per kwh reduction (\$.08412 per kwh to \$.07412 per kwh) in the Small General Service rate for the summer months. This class was targeted because it had the most significant amount of erosion. As a result of this decision, the Cooperative filed its application for a temporary rate reduction for the summer consumption months of June, July, and August 1988. The application was docketed and processed as Docket No. 8116. The Commission approved this temporary rate reduction for 1988 by Final Order dated September 6, 1988.

As a result of the 1988 rate reduction, which was made effective in the fourth quarter of 1988, the number of switchover requests significantly dropped. The following table reflects the change.

Table 1

<u>Year</u>	<u>No. of Requested Switchovers to CP&L</u>	<u>No. of Completed Switchovers</u>
1987	79	23
1988-1st Q	25	7
1988-2nd Q	22	6
1988-3rd Q	25	8
1988-4th Q*	1	1

* The 1988 fourth quarter figure occurred after the temporary reduction was approved in Docket No. 8116.

Mr. Fagan testified that the number of switchover requests is very important to the Cooperative since it only has 8535 customers in the Small General Service Class. In Mr. Fagan's opinion, incentive programs, such as the proposed rate reduction, are important to the Cooperative in order to maintain a level customer base over which to spread fixed costs.

General Counsel's position. General Counsel also recommended approval of the proposed temporary rate reduction. With respect to the issue of customer base erosion and attrition, General Counsel established by a preponderance of the evidence that: (1) the Cooperative's concern about customer erosion was legitimate; and (2) the public interest would be served by lowering the Cooperative's summer rates.

General Counsel witness Jeffrey Rosenblum testified that there had been a reduction in the customer base prior to the 1988 rate reduction, especially in the dual certified service areas. Mr. Rosenblum analyzed the number of switchover requests and agreed that the number of requests significantly decreased after the Summer 1988 rate reduction.

Mr. Rosenblum also cited the disparity between the Cooperative's and CP&L's current rates as a potential or probable cause of switchovers in the past. The example given by Mr. Rosenblum was illustrative of the problem. A Small

General Service class residential customer using 1000 kwh of electricity would pay \$95.21 to the Cooperative, compared to only \$68.06 to CP&L for the same amount of energy. Mr. Rosenblum stated that based on this rate comparison, such a significant difference in rates could cause erosion of the Cooperative's customer base.

The final reason cited by Mr. Rosenblum in support of the proposed temporary rate reduction was that, generally, it is in the public interest to lower rates, given all other items are equal. In this instance, Mr. Rosenblum felt it was in the Cooperative's and its ratepayers' best interest to allow the temporary rate reduction. The Cooperative's Small General Service ratepayers would benefit from lower rates during peak usage period; and the Cooperative would benefit from providing incentives to maintain its customer base.

2. Impact of Temporary Reduction on Financial Integrity

The Cooperative and General Counsel agreed that the rate reduction for June through September 1989 would have only a minimal impact on the Cooperative's Times Interest Earned Ratio ("TIER") and Debt Service Coverage Ratio ("DSC"). These ratios are closely monitored by the Rural Electrification Administration ("REA") and the Cooperative Finance Corporation ("CFC"), which are the major lenders to electric cooperatives.

In order to meet REA mortgage requirements, the Cooperative must maintain a TIER of at least 1.5 times ("X") for the average of the two highest TIERs out of the last three years of operation. A TIER can be computed with or without capital credits. If a cooperative's TIER or DSC levels are below the REA or CFC requirements, the lenders could refuse to loan additional money to the Cooperative, thereby requiring any future plant investments to be paid for through the Cooperative's general funds.

With respect to DSC, the Cooperative must maintain an annual DSC of 1.25X. The DSC is intended to show the Cooperative's ability to pay its principal and

interest and is a cash flow measurement. As with the TIER, the DSC can be calculated with or without capital credits.

Although both parties calculated different TIERS and DSCs, they both agreed that the short-term financial implications were minimal.

San Patricio's position. Mr. Frank Stubbs, consultant, testified on behalf of the Cooperative. Mr. Stubbs analyzed the present and projected financial condition of the Cooperative as a result of the 1988 rate reduction. In his analysis, Mr. Stubbs calculated the following operating TIERS and DSCs excluding capital credits:

Table 2

<u>Year</u>	<u>Operating TIER</u>	<u>DSC</u>
1986	1.91X	
1987	1.70X	
1988	1.77X	1.73X
1989 (budget)	1.95X	1.83X
1989 (without rate reduction)	2.44X	

Based on Mr. Stubbs' calculations, the average of the two highest TIERS is 1.86X. Consequently, in Mr. Stubbs' opinion, the Cooperative could sustain any minimal revenue loss caused by the temporary rate reduction. Mr. Stubbs also concluded that both DSCs were satisfactory.

General Counsel's position. Ms. Martha Hinkle, financial analyst, recommended that the temporary rate reduction for the Summer of 1989 be approved. She testified that this one-time reduction will place the Cooperative in a weak financial condition for 1989, based on actual financial data for the first five months and projected results for the remaining seven months. However, Ms. Hinkle concluded that since the rate reduction would only be temporary for the summer months of 1989, the Cooperative would not be permanently harmed.

Ms. Hinkle analyzed the Cooperative's historical TIER, DSC, and equity ratios. Beginning in 1985, one year prior to the Cooperative's last rate case, Ms. Hinkle calculated the following historical financial indicators.

Table 3

	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989*</u>
Net TIER	1.00X	2.98X	1.84X	2.04X	1.81X
TIER w/o capital credits	0.86X	2.08X	1.69X	1.76X	1.48X
DSC	1.32X	2.51X	1.83X	1.90X	1.64X
DSC w/o capital credits	1.23X	1.93X	1.73X	1.72X	1.43X
Equity to total capitalization	37.09%	39.22%	39.66%	40.61%	NA

*1989 figures were calculated by using the actual financial data from the first five months of 1989 combined with the projected results for the remaining seven months of the year. These 1989 figures include the proposed rate reduction. The equity ratio was not available.

Based on her analysis, Ms. Hinkle did not believe the Summer 1989 rate reduction would endanger the Cooperative's financial integrity. Ms. Hinkle believed that even if the TIER were to fall below 1.50X in 1989, the default provisions would not be invoked since TIER is based on the average of the two highest years. Ms. Hinkle also testified that due to the Cooperative's strong equity ratio and acceptable DSC and general funds levels, she concluded that the Cooperative's financial condition was adequate to support the decrease in revenues for the Summer 1989 rate reduction.

C. Permanent Reduction for Summer Consumption Months

1. Customer Base Erosion and Other Factors

The Cooperative's position. San Patricio requested that this rate reduction be approved for the summer consumption months of June, July, August, and September in subsequent years. The Cooperative provided the following justifications in support of the permanent reduction: (1) the rate reduction would diminish the potential for erosion of the Small General Service Class; (2) the rate reduction would benefit the Cooperative's service area that has experienced economic hardships; (3) the rate reduction would have only minimal

long-term impact on the financial integrity of the Cooperative; (4) the proposed rate reduction would not be discriminatory to other classes of customers because all other classes of customers would continue to pay their current rates as established in the Cooperative's last rate case; (5) the rate reduction would not cause an increase in consumption by current customers such that the Cooperative would be unable to meet the energy demands of its customers; and (6) the rate reduction could result in an increase in requests for new service by potential Small General Service Class customers.

Mr. Fagan testified that the Board of Directors of the Cooperative considered all of these factors in deciding to request approval of the rate reduction on a permanent basis. Additionally, Mr. Fagan testified that after the 1988 rate reduction, the Cooperative had exceeded its TIER and had realized operational margins. No specifics were given.

General Counsel's position. General Counsel opposed the rate reduction on a permanent basis for the following reasons: (1) the Cooperative did not provide a thorough analysis of the adequacy of the proposed rate reduction or the ultimate impact on other classes; (2) the Cooperative did not provide sufficient rationale for making the rate decrease permanent; (3) there would be a significant negative impact on the Cooperative's financial integrity; and (4) given the pending CP&L rate case, any permanent rate reduction granted for competitive reasons would be premature. Mr. Rosenblum testified that, in his opinion, if the Cooperative desired a permanent rate reduction, it should file a full rate filing package with test year data in order to allow General Counsel and the Commission Staff an opportunity to review all elements of the Cooperative's cost of service. Mr. Rosenblum also testified at the hearing that even though the rate reduction did not deviate from the cost of service reviewed in the Cooperative's 1986 rate case, a full cost of service analysis was necessary because the rate reduction could affect the entire operations of the Cooperative. In Mr. Rosenblum's opinion, the Cooperative had merely requested a rate change without providing a thorough analysis of all implications.

San Patricio rebuttal. Mr. Fagan testified in rebuttal on three issues. First, he testified that the Cooperative expended \$72,128.86 in rate case expenses on its last rate case in 1986. In his opinion, it seemed very inefficient to spend a significant amount of money for a four-month rate reduction per year. Second, he noted that the Cooperative's rates would still be substantially higher than CP&L, even if CP&L were granted all of its rate relief for the next four years. Consequently, he maintained, any means of minimizing the disparity between the rates was important to the Cooperative. Third, Mr. Fagan suggested that in the event that the Commission was concerned about the Cooperative's financial integrity, the Commission could approve the reduction on a permanent basis subject to the Cooperative maintaining its TIER and DSC ratios at satisfactory levels for 1989 and the 1990 budget.

2. Impact of Permanent Reduction on Financial Integrity

San Patricio's position. In addition to the analysis of the short term financial implications, Mr. Stubbs calculated a projection of the financial impact of the rate reduction on the Cooperative for 1989. Mr. Stubbs used a 1988 test year and made a projection on the effect of the \$.01 per kwh reduction as applied to the Cooperative's 1989 budget. He noted that the 1989 budget assumed a 5 percent increase in kwh usage for the Small General Service Class. The Small General Service Class comprises 94 percent of the Cooperative's customer base. He concluded that as a result of the \$.01 rate reduction, the Cooperative would experience a loss of revenue in 1989 of approximately \$308,078.

Mr. Stubbs did not make a projection for 1990 since the Cooperative had not yet prepared its 1990 budget. However, based on population and electricity consumption projections from a potential new customer, the Navy Homeport under construction at Ingleside, Mr. Stubbs opined that the Cooperative could maintain or even lower the present rates within the foreseeable future.

General Counsel's position. Ms. Hinkle recommended that the permanent summer rate reduction be denied. In her opinion, based on the financial indicators, the Cooperative would sustain harmful impacts on its financial integrity as a result of the permanent rate reduction. Ms. Hinkle based her opinion on her calculated TIER and DSC for 1989, as shown in Table 3.

Ms. Hinkle testified that the relevant TIER and DSC to consider were those excluding capital credits. In her opinion, whenever the receipt of large non-cash capital credits is anticipated, it would be appropriate to consider the TIER and DSC ratios excluding capital credits. By excluding the non-cash capital credits from these calculations, she opined that the ratios more accurately represented the Cooperative's debt coverage capability.

Ms. Hinkle concluded that based on her calculations, the 1989 TIER without capital credits would be 1.48X, which is slightly below default level. As noted by Ms. Hinkle, the Cooperative's 1989 TIER would be 2.26X without the rate reduction. The difference in the TIERS illustrates the significant impact the rate reduction would have on the Cooperative.

With respect to the 1989 DSC, Ms. Hinkle calculated the projected DSCs of 1.64X (with rate reduction) and 1.90X (without rate reduction). Ms. Hinkle testified that these DSCs would be below the state and national medians, 2.01X and 2.07X, respectively, but are well above the default level of 1.25X.

Finally, in completing her analysis, Ms. Hinkle analyzed the reasonableness of the budget projections used by Mr. Stubbs. Ms. Hinkle concluded that the operating revenues for the first five months of 1989 were approximately 4 percent below the budget and the kwh sales were approximately 6 percent below the 1989 budget. Therefore, in her opinion, the estimated 5 percent increase in kwh usage assumed for the Small General Service Class and used in the 1989 budget was unrealistic and too optimistic. Therefore, in her opinion, the

Cooperative probably would achieve even lower financial ratios in 1989 than those shown in Table 3.

San Patricio rebuttal. Mr. Stubbs attempted to discount Ms. Hinkle's analysis of two issues. First, with respect to Ms. Hinkle's criticisms of the 5 percent increase in kwh sales, Mr. Stubbs indicated that the preliminary figures for June kwh sales showed a marked improvement in moving towards the 1989 budgeted figures. Consequently, he believed that it was within the realm of reason that the 1989 budget figure for kwh sales could be accomplished.

The second issue Mr. Stubbs disagreed with related to the 1.48X TIER calculated by Ms. Hinkle. Mr. Stubbs discounted this calculation for the following reasons: (1) since REA reviews TIER including all margins, Ms. Hinkle's calculated TIER of 1.48X was inaccurate because it did not include capital credits; (2) the June 1989 pro forma data showing an increase in kwh sales and revenues would improve the TIER calculated by Ms. Hinkle; and (3) TIER alone was not a good measure of the financial condition of the Cooperative.

V. Discussion and Opinion

The ALJ recommends that the interim rate of \$.07412 per kwh, which reflects the \$.01 per kwh reduction for the Small General Service Class, be permanently approved for the summer consumption months of June, July, August, and September 1989. The ALJ further recommends that the Cooperative's request for the rate reduction for the summer consumption months in subsequent years be denied at this time.

A. Temporary Rate Reduction for Summer 1989

[1]The ALJ believes that the Cooperative established the need for the temporary reduction for two reasons: (1) the apparent beneficial impact the lower rate had on lowering the number of switchovers; and (2) the minimal

impact the temporary rate reduction will have on the short term financial integrity of the Cooperative.

The evidence clearly reflects a dramatic decrease in the number of switchovers after the rate reduction was implemented in the Summer of 1988. Although there was no evidence presented regarding the switchover rates for the first two quarters of 1989, it is apparent to the ALJ that the rate reduction provided a proper incentive for the Cooperative's customers to remain with San Patricio during the summer peak usage period. In the ALJ's opinion, maintaining a relatively level customer base is critical to a cooperative that must spread its fixed costs, such as investment in physical plant, over the customer base.

The evidence also established that the temporary rate reduction would have minimal impact on the short-term financial integrity of the Cooperative. Both parties provided testimony on the effects of the rate reduction on the Cooperative. As pointed out by Ms. Hinkle, the Cooperative's short term financial integrity showed strength in the DSC and equity ratios. Consequently, there did not appear to be any reason for concern for the Cooperative's financial condition if the temporary rate reduction for the Summer of 1989 was approved.

B. Permanent Rate Reduction for Summer Consumption Months

The ALJ recommends that the Cooperative's request for the permanent rate reduction be denied at this time. In the ALJ's opinion, the Cooperative did not sustain its burden of proof to show that the proposed rate reduction would not have significant long-term effects on the financial integrity of the Cooperative. The ALJ further recommends that the Commission deny General Counsel's request to require the Cooperative to file a rate filing package in the event it seeks a similar rate reduction at a later time.

There were four contested issues with respect to the permanent rate reduction: (1) whether a permanent rate reduction would substantially decrease the overall attrition of the Small General Service Class; (2) whether the rate reduction would have a harmful impact on the financial integrity of the Cooperative; (3) whether the Cooperative should be required to file a rate filing package if it seeks a similar rate reduction for 1990 and subsequent years; and (4) whether the Commission could conditionally approve the permanent rate reduction. Each issue is discussed separately.

1. Effect on Customer Base

The ALJ recommends that the Commission find that: (1) the Cooperative did not establish that the Small General Service Class was currently decreasing as a result of switchovers or attrition; and (2) the Cooperative did not establish that the disparity in rates between CP&L and the Cooperative provided sufficient justification by itself to reduce the Small General Service rate in years after 1989.

The Cooperative did establish that it had historically experienced switchover requests. However, the Cooperative did not provide evidence to show that the switchover phenomenon was continuing in nature and was anticipated in the future. Additionally, there was no evidence presented to demonstrate that the Small General Service Class was actually decreasing overall. Simply by stating that the switchovers had occurred in the past does not indicate that they will continue in the future for the summer months. Since attrition of a customer base can occur due to the loss of current customers or loss of potential customers, the Cooperative should have provided evidence to show the Small General Service Class was actually decreasing. In fact, there is evidence that the Cooperative anticipates new customers in its service areas. Since there was no actual data provided in the record related to the actual size of the Small General Service Class, the ALJ believes that the Cooperative did not justify the rate reduction for the years after 1989.

Additionally, the ALJ believes it would be premature for the Commission to set a permanent summer rate for subsequent years in order to allow the Cooperative to compete with CP&L in the dual certified service areas. While the Cooperative proved that a disparity currently exists between CP&L's and the Cooperative's summer rates, the Cooperative could not prove that such a wide disparity would continue to exist. There is too much uncertainty with respect to the level of CP&L's rates since its rate case is currently pending. The ALJ further believes that even if the disparity were to continue, there is inadequate evidence to justify a permanent rate decrease.

2. Financial Integrity

[2] The ALJ finds that a rate reduction for the summer consumption months in years after 1989 would place the Cooperative in a weak financial condition in those future years. Although the financial ratios probably would not drop below default levels, the ALJ agrees with General Counsel that the deterioration in these ratios from year to year suggests that the Cooperative might not be able to justify a permanent decrease.

The ALJ finds that the TIER and DSC calculations provided by General Counsel witness Martha Hinkle are more reliable figures on which to base an opinion on the projected financial impact of the rate reduction. In utilizing actual revenues and sales data for the first five months of 1989, Ms. Hinkle was able to calculate TIER and DSC ratios that are more realistic. The ALJ believes that the Cooperative's TIER and DSC calculations performed by Mr. Stubbs were too optimistic since they were based solely on a 1989 budget that did not reflect an accurate picture of the Cooperative's actual sales and revenues. The assumption used in the 1989 budget for a 5 percent kwh usage increase was not realistic and, consequently, little weight can be given to financial projections based upon them.

The June 1989 pro forma figures provided by the Cooperative do not lend credence to Mr. Stubbs' analysis or diminish the reliability of Ms. Hinkle's

calculations for two reasons. First, the June 1989 figures are admittedly preliminary and the accuracy of the data was not established. Second, while these pro forma figures might give the Cooperative hope that it will meet its 1989 budget, the ALJ does not believe that this one month actual data establishes a trend that the Cooperative will meet its budgeted expectations for increased kwh sales and revenues.

Based on the financial indicators calculated by Ms. Hinkle, the ALJ believes that the Cooperative would be taking a great financial risk in implementing this rate reduction on a permanent basis. The Cooperative's financial indicators were not strong for 1988. In making this recommendation, the ALJ attempted to take into account the beneficial financial effects of the proposed rate reduction, e.g., increase in new customers, thereby increasing energy sales; or stimulation in kwh usage due to lower rates. However, the ALJ was unable either to quantify the benefits to the Cooperative or to consider the potential impact of additional revenues because no evidence was presented. As a result, the benefits of the rate reduction could not be taken into consideration when considering the impact on the financial integrity of the Cooperative. Even though the Cooperative's Board of Directors has decided that it is willing to take the short term financial risk in order to maintain its customer base, the ALJ cannot recommend that the rate reduction be made permanent at the expense of the Cooperative or its ratepayers.

3. Filing of Rate Filing Package in Support of Rate Reduction

The ALJ recommends that the Commission deny General Counsel's request to order the Cooperative to file a full rate filing package in the event that it seeks a similar rate reduction at a later time. Based on this record and the uncertainty of the competitive situation the Cooperative will face in the future, the ALJ was not persuaded that it would be appropriate at this time to require the Cooperative to file a rate filing package in the event it seeks this type of rate reduction again.

The ALJ found this issue extremely troublesome. On the one hand, the ALJ is mindful of the need by the Commission's General Counsel, Staff, and other intervenors to obtain revenue requirement and financial data to review the reasonableness of a proposed rate. In this docket, General Counsel argued that since the Cooperative did not provide data to show the cost of providing service to the Small General Service class or the impact of the rate reduction on other classes, the Commission Staff was unable to determine the impact of the decrease beyond the Summer of 1989. In fact, the ALJ notes that the Cooperative did not provide any testimony regarding the cost of providing the service. On the other hand, the ALJ is sympathetic to the Cooperative's argument that there is a fairly significant cost associated with providing a complete rate filing package, especially in light of the fact that the utility is requesting a rate reduction for a four-month period each year.

The ALJ was almost persuaded by General Counsel's request to require the Cooperative to file a rate filing package in the event the Cooperative requested a similar rate reduction at a later time. General Counsel and Staff raised concerns about: (1) the level of the Cooperative's current rates; (2) the lack of data related to the cost of providing service to the Small General Service Class; and (3) the lack of information on the future impact on the other classes of customers. However, these concerns were only general allegations and did not provide the ALJ with sufficient information to order a rate filing package. Additionally, the ALJ had two concerns related to General Counsel's request: (1) given the weakened financial condition of the Cooperative, there may be circumstances in the future that may justify a rate reduction to stimulate energy usage or to retain customers; and (2) the level of disparity between the Cooperative's and CP&L's rates is too uncertain at this point to project. Were it not for the uncertainty in both of these concerns, the ALJ might have agreed with General Counsel's assessment of the need for a rate filing package.

The ALJ believes that this issue is more appropriately addressed at the time that a petition requesting a similar rate reduction is filed with the

Commission. There may be circumstances that would support a decision by the Commission to order the Cooperative to file a rate filing package; and conversely, there may be circumstances that would justify the waiver of the filing requirement of the rate filing package. Only at the time of filing would the Commission be in an informed position to make this decision. Additionally, since the Cooperative is now familiar with the concerns that the Commission Staff had in recommending denial of the permanent rate reduction at this time, the Cooperative would be in a better position to address those concerns.

4. Conditional Approval of Permanent Rate Reduction

[3] The ALJ recommends that the Commission reject the Cooperative's request for approval of the permanent rate reduction for the years following 1989 conditioned on the Cooperative meeting certain TIER and DSC ratios for 1989 and 1990. In the ALJ's opinion, APTRA requires the order to dispose of all issues in the application. See, § 16(c) of APTRA. If the Commission issued an order as requested by the Cooperative, the order would not establish a final rate for the summer consumption months after 1989. The Commission would not be able to make the required findings and conclusions under § 38 of PURA until it determined if the Cooperative had met the required TIER and DSC ratios for 1989 and 1990. Accordingly, the order would not be final in nature. People Against a Contaminated Environment v. Texas Air Control Board, 725 S.W.2d 810 (Tex. App. -- Austin 1987, writ ref'd n.r.e.).

VI. Findings of Fact and Conclusions of Law

The ALJ recommends that the Commission adopt the following Findings of Fact and Conclusions of Law.

A. Findings of Fact

1. San Patricio Electric Cooperative, Inc. ("San Patricio" or "Cooperative") is a non-profit, member-owned corporation organized and existing under the laws

of the State of Texas, engaged in retail electrical distribution pursuant to a Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas ("Commission").

2. San Patricio purchases all its energy in bulk wholesale, and does not engage in generation.

3. The Cooperative provides retail electric utility service in nine (9) counties north and northwest of Corpus Christi, Texas.

4. On April 20, 1989, the Cooperative filed a Statement of Intent to implement a permanent decrease of \$.01 per kilowatt hour ("kwh") in its Small General Service Rate for the summer consumption months of June, July, August and September 1989 and subsequent summer consumption months on a system-wide basis contemporaneously with the Commission and the municipalities exercising original jurisdiction under the Public Utility Regulatory Act.

5. The Statement of Intent included proposed revisions to the current tariff, the details of the proposed change, the classes and numbers of utility customers affected, and other information required by the rules and regulations of the regulatory authorities exercising original jurisdiction.

6. A copy of the Statement of Intent was mailed or delivered to the appropriate officer of each municipality affected by the proposed change and to all members of the Cooperative.

7. Notice of the Cooperative's proposed change in rates was provided to the public by publication of the proposed change in conspicuous form and place once each week for four consecutive weeks in the *Corpus Christi Caller*, *Bee Picayune*, *The Progress*, *San Patricio County News*, *Odem-Edroy Times*, *Taft Tribune*, and *Mathis Tribune*, which have general circulation in each county containing territory affected by the proposed

change. The Cooperative also timely mailed or delivered a Notice of Rate Change Request and Statement of Intent to its members.

8. This docket was originally assigned to Hearings Examiner Michelle Dains.

9. On May 3, 1989, notice of a prehearing conference to be held on May 16, 1989 was issued. The implementation of the requested decrease has been suspended for 150 days from the effective date until October 22, 1989.

10. There were no motions to intervene or protest letters.

11. On May 16, 1989 a prehearing conference was conducted in this proceeding. Mr. Campbell McGinnis appeared on behalf of the Cooperative and Ms. Paula Mueller appeared for General Counsel.

12. At the prehearing conference, evidence was taken regarding the Cooperative's request for interim approval of the rates. General Counsel did not oppose the interim approval, reserving its right to make a final recommendation after further review of the petition.

13. On May 17, 1989, the Commission granted the Cooperative's motion for interim approval of the proposed rate decrease for the summer consumption months of June, July, August, and September 1989, subject to refund and to final approval.

14. On July 10, 1989, the hearing on the merits was convened with Examiner Dains presiding. Appearing on behalf of the Cooperative was Mr. Earnest Casstevens. Mrs. DeAnn Walker appeared on behalf of General Counsel.

15. The Cooperative had previously requested the same rate reduction of \$.01 per kwh for the Small General Service Rate on a temporary basis for the summer consumption months of June, July, and August 1988 in Application of San Patricio Electric Cooperative, Inc. for Authority to Implement a Temporary Rate

Reduction in the Small General Service Rate, Docket No. 8116, _____ P.U.C. BULL. _____, (September 6, 1988) ("Docket No. 8116"). The Commission approved the implementation of the temporary rate reduction.

16. The decision to seek this rate reduction on a permanent basis was made by the San Patricio Board of Directors, which represents the Cooperative's members.

17. Approximately thirty-seven percent (37%) of the Cooperative's retail service area is dual certificated with Central Power & Light Company ("CP&L"). Approximately forty-three percent (43%) of the Cooperative's customers live within the dual certified service areas. The dual certified service area is more densely populated and has a higher growth rate than the Cooperative's single certified service areas.

18. The Cooperative's rates for service to Small General Service Class are currently higher than the corresponding rate for similar customers receiving service from CP&L.

19. In order to avoid loss of customers and a decline in customer growth, it is appropriate to decrease the Cooperative's Small General Service Rate during the summer consumption months of June through September 1989, so that this rate is more competitive with CP&L's rates during the same period.

20. In 1987, the number of switchover requests from the Cooperative to CP&L was 79, of which 23 were completed. In the first three quarters of 1988, the number of switchover requests was 72, of which 21 were completed. After the approval of the rate decrease for the summer months in 1988, the switchover rate for the fourth quarter was 1. This reduction represents a dramatic decrease in the number of requested switchovers.

21. A decline in customer growth or attrition of the Cooperative's customer base would impact the Cooperative's financial condition on a long term basis

because there would be fewer customers over which to spread over the fixed costs of the Cooperative.

22. The proposed rate of \$.07412 per kwh reduces the disparity between CP&L's and the Cooperative's rates during the months of June, July, August, and September 1989.

23. The proposed rate reduction will cause a loss in annual revenue to the Cooperative of approximately \$308,078. The Cooperative does not propose at this time to recover any lost revenue from this rate reduction from any other class of customers.

24. The proposed rate reduction will not substantially impact the financial integrity of the Cooperative for the year 1989.

25. As a result of this rate reduction for the months of June, July, August, and September 1989, the Cooperative's Small General Service ratepayers will pay less for electricity; the Cooperative will be more competitive with CP&L during these months; and no short term harm to the Cooperative's financial condition will occur.

26. The Cooperative did not provide any evidence to establish that attrition of the Small General Service Class currently exists or will exist in the future without the permanent rate reduction.

27. The proposed rate reduction on a permanent basis could significantly weaken the Cooperative's financial condition. The Cooperative's financial condition is not strong currently as evidenced by General Counsel's witness Martha Hinkle's calculations of the 1989 TIER of 1.48X and DSC of 1.43X.

28. The assumption of a 5 percent increase in kwh sales is not realistic based on the first five months of actual 1989 data and, therefore, diminishes the reliability of the 1989 budgeted figures.

29. The calculations of 1989 TIER and DSC ratios produced by Ms. Hinkle are more reliable than those of the Cooperative since she utilized the first five months of actual 1989 financial data from the Cooperative.
30. Approval of a permanent rate reduction could lead to significant harmful effects on the financial integrity of the Cooperative.
31. The Cooperative did not provide any evidence showing the cost of providing service to the Small General Service class.
32. There is no evidence in this record reflecting the impact of the proposed rate reduction on a permanent basis on the other classes of customers served by the Cooperative.
33. The Cooperative's rate classes, other than Small General Service, are unaffected by the proposed reduction at this time since the Cooperative is not requesting a change in any other rate. There is no evidence that if the application is granted in full in this docket, the Cooperative will not ask for future rate increases for the other classes of customers to compensate for the resulting decreases in revenue from the Small General Service class.

B. Conclusions of Law

1. San Patricio Electric Cooperative, Inc. is a public utility as defined in § 3(c)(1) of the Public Utility Regulatory Act ("PURA"), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1989).
2. The Commission has jurisdiction over this matter pursuant to §§ 16(a), 17(e), 37, and 43(a) of PURA.
3. The Commission has ratemaking jurisdiction in this docket with respect to all customers of the Cooperative not subject to the original jurisdiction of any municipality pursuant to § 17(e) of PURA.

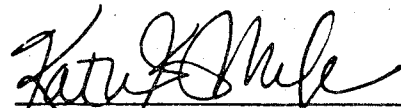
4. The Cooperative has provided adequate notice and complied with §43(a) of PURA and 16 T.A.C. § 21.22(b).

5. San Patricio has met its burden of proof with respect to its request for a \$.01 per kwh rate reduction to the Small General Service rate for the summer consumption months of June, July, August, and September 1989, and, therefore, the proposed rate of \$.07412 per kwh is just and reasonable and not unreasonably discriminatory.


6. The Cooperative did not sustain its burden of proof with respect to its request for a permanent reduction in the summer rates for the Small General Service Class. The Cooperative did not sustain its burden of proof that the rates are just and reasonable and nondiscriminatory as required in § 38 of PURA.

7. The undersigned Administrative Law Judge served as the lawful replacement for Hearings Examiner Michelle Dains under § 15 of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1989).

Respectfully submitted,


KATHERINE K. MUDGE
ADMINISTRATIVE LAW JUDGE

APPROVED on this the 5th day of October, 1989.


MARY ROSS McDONALD
DIRECTOR OF HEARINGS

DOCKET NO. 8740

PETITION OF SAN PATRICIO
ELECTRIC COOPERATIVE, INC. TO
DECREASE GENERAL SERVICE RATE

§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above-styled application was processed in accordance with applicable statutes and rules by an examiner who prepared and filed a report containing Findings of Fact and Conclusions of Law. The Examiner's Report is ADOPTED and made a part hereof. The Commission further issues the following Order:

1. The petition of San Patricio Electric Cooperative, Inc. ("San Patricio") is hereby GRANTED IN PART and DENIED IN PART.
2. The Small General Service rate of \$.07412 per kilowatt hour for the consumption months of June, July, August, and September 1989 is APPROVED.
3. San Patricio's request to make the rate reduction permanent for all subsequent summer consumption months of June through September is DENIED.
4. Motions and requests for relief not granted by the Commission or by Examiner's Order are DENIED for lack of merit.

SIGNED AT AUSTIN, TEXAS on this the 23rd day of October, 1989.

PUBLIC UTILITY COMMISSION OF TEXAS


SIGNED:


MARTA GREYTOK

SIGNED:


JO CAMPBELL

ATTEST:


MARY ROSS MCDONALD
SECRETARY OF THE COMMISSION

MEMORANDUM DECISIONS

TELEPHONE

Contel of Texas, Docket No. 8925. Examiner's Report adopted October 23, 1989. Application for a minor boundary change in Liberty County approved.

GTE Southwest, Inc., Docket No. 8930. Examiner's Report adopted October 23, 1989. Application for a minor boundary change in Hays County approved.

Contel of Texas, Docket No. 8932. Examiner's Report adopted November 1, 1989. Application for a minor boundary change in Milam and Bell Counties approved.

Southwestern Bell Telephone Company, Docket No. 8936. Examiner's Report adopted November 1, 1989. Application for the expansion of a base rate area in Montague County approved.

Central Telephone Company of Texas, Docket No. 8938. Examiner's Report adopted November 1, 1989. Application for a minor boundary change in Coryell County approved.

Southwestern Bell Telephone Company, Docket No. 8988. Examiner's Report adopted November 1, 1989. Application for expansion of a base rate area in Lubbock County approved.

GTE Southwest, Inc., Docket No. 8989. Examiner's Report adopted November 8, 1989. Application for expansion of a base rate area in Williamson County approved.

Southwestern Bell Telephone Company, Docket No. 9014. Examiner's Report adopted November 8, 1989. Application for expansion of a base rate area in Hood County approved.

ELECTRIC

Magic Valley Electric Cooperative, Inc., Docket No. 8428. Examiner's Report adopted October 23, 1989. Application for a transmission line in Cameron County approved.

Houston Lighting & Power Company, Docket No. 8643. Examiner's Report adopted October 23, 1989. Application for a transmission line in Wharton County approved.

Pedernales Electric Cooperative, Inc., Docket No. 8797. Examiner's Report adopted October 23, 1989. Application for a transmission line in Hays County approved.

Houston Lighting & Power Company, Docket No. 8801. Examiner's Report adopted October 23, 1989. Application for a transmission line in Chambers County approved.

Upshur Rural Electric Cooperative, Docket No. 8802. Examiner's Report adopted November 8, 1989. Application for a service area exception in Smith County approved.



