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TELEPHONE

ELECTRIC

MEMORANDUM DECISIONS

Public Utility Commission of Texas

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Austin, Texas 78757 · 512/458-0100

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APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST TO ELIMINATE EXTENDED AREA SERVICE BETWEEN THE GEORGETOWN AND JARRELL EXCHANGES	§ § § § §	DOCKET NO. 5258

February 15, 1984

This docket involves the request of Georgetown to terminate Extended Area Service with the Jarrell Exchange. The Commission determined that termination of the service was in the public interest.

[1] RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE

The City of Georgetown's request to terminate Extended Area Service ("EAS") was in the public interest because: (1) the customer survey indicated that a majority of Georgetown's residents did not want the service; (2) long-distance toll service sent a better signal to users because the toll rates are usage-sensitive; and (3) EAS was not cost-based. (p. 1304)

[2] In considering the City of Georgetown's request to terminate Extended Area Service ("EAS"), various alternatives were considered and rejected. These options were: (1) to replace the current flat rate local service with measured service; and (2) to implement one-way EAS for Georgetown. Neither option was viable based on the evidence in the record. (p. 1304)

[3] RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE
RATEMAKING--RATE DESIGN--REFUNDS, CREDITS AND SURCHARGES

Even though the Commission determined that Extended Area Service ("EAS") should be eliminated, the residents of the City of Georgetown were not entitled to refund of monies paid for EAS from the date of the City Council Resolution to the date of the Commission Final Order because: (1) the customers were not overbilled, but rather charged a legal tariffed rate; (2) EAS service was provided during that time period; and (3) GTE did not cause undue delay in obtaining the results of the customer survey. (p. 1305)

DOCKET NO. 5258

APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST TO ELIMINATE EXTENDED AREA SERVICE BETWEEN THE GEORGETOWN AND JARRELL EXCHANGES	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Procedural History

On July 7, 1983, General Telephone Company of the Southwest (GTSW) filed a tariff amendment (T-126-3) requesting Commission approval to eliminate extended area service (EAS) between the Georgetown and Jarrell exchanges. On July 19, 1983, the tariff filing was docketed and assigned Docket No. 5258. On July 20, 1983, the City of Georgetown (Georgetown), filed a petition requesting the elimination of EAS (noting that the City of Jarrell (Jarrell) opposes the request), and also requesting that GTSW be required to refund to the Georgetown customers any excess amounts collected after the city council of Georgetown requested the elimination of EAS. (It is noted that GTSW initiated this filing pursuant to the request of the Georgetown City Council.)

A prehearing conference was conducted in the above styled and numbered docket on August 9, 1983, with appearances by Ms. Glenda Beard for GTSW and Mr. Eric Stein for the Commission staff. No one appeared on behalf of the cities of Georgetown and Jarrell. Further, no customers appeared at the prehearing conference requesting protestant or intervenor status in these proceedings.

During the prehearing conference the parties agreed to a hearing date of November 3, 1983. In addition, GTSW was ordered to provide appropriate notice of the application in this docket pursuant to Section 43(a) of the Public Utility Regulatory Act (PURA or the Act), Tex. Rev. Civ. Stat. Ann. art. 1446c (1980) as the result of this docket could alter telephone service and rates to both the cities of Georgetown and Jarrell. Pursuant to Section 43(d) of the Act, GTSW's proposed tariff changes were suspended for one hundred twenty (120) days beyond the otherwise effective date of January 1, 1984, to allow the Commission staff ample opportunity to adequately review the request.

On August 30, 1983, Georgetown requested intervenor status in this case. On August 31, 1983, Mr. Jack Maidlow, a GTSW customer, also requested intervenor status herein. By an order dated September 6, 1983, Georgetown and Mr. Jack Maidlow were granted intervenor status.

On September 9, 1983, GTSW requested an extension of its deadline for prefiling testimony. On September 23, 1983, the General Counsel filed a memorandum noting that the staff had no objection to the company's request. No objections

were received from the other parties in this case. Although a written order was not entered, GTSW was allowed to extend its prefiling date from August 31, 1983, to October 3, 1983. In accordance with this extension, the hearing on the merits was rescheduled for December 5, 1983, and new discovery deadlines were established by an order dated September 30, 1983.

On November 28, 1983, GTSW forwarded to the Commission its notice of publication in this case. After review thereof, it is the examiner's opinion that GTSW properly gave notice to the public of its pending application herein.

The hearing on the merits was commenced on December 5, 1983. Appearances were made by Ms. Glenda R. Beard and Mr. Tom C. Duke for GTSW, Mr. Joe B. McMaster and Ms. Cynthia Whitlow for the City of Georgetown, Ms. Dorothy Jones and Ms. Leona Kokel for the City of Jarrell, Mr. J. S. Maidlow on his own behalf, and Ms. Debra Nikazy for the Commission staff.

II. Opinion

A. Evidence -- Positions of the Parties

1. GTSW

GTSW's position is actually neutral on the issue of whether or not EAS should be continued between the cities of Georgetown and Jarrell. However, as noted in the Procedural History above, GTSW filed this application at the request of the City Council of Georgetown. Accordingly, by this filing, GTSW is proposing the elimination of EAS, and an alternative offering to Georgetown's and Jarrell's current EAS arrangement.

GTSW witness A. M. Chappell testified regarding the proposed alternative offering. Mr. Chappell testified that the alternative offering would change Georgetown's and Jarrell's current flat rate local service to a measured rate service; which will allow both Georgetown and Jarrell customers to use existing EAS facilities for calls between the two communities. (GTSW's rates for the proposed measured service offering are shown on the attached exhibit marked Examiner's Exhibit I.) Mr. Chappell testified that measured service offers two principal benefits:

1. It allows the customers greater control over the amount of their local bills (e.g., a three minute call from one customer in Jarrell to another customer in Jarrell will cost 7 cents. This customer, after paying $4.50 for his exchange access charge can then place 79 such calls without exceeding the $10.05 combined flat rate currently in effect).

2. It allows the customers to place calls between the two communities at rates less than present toll rates (e.g., a three minute measured rate call placed during a normal work day will cost 9.8 cents, while a regular toll call placed during the same period will cost 26 cents).

According to Mr. Chappell, this service will, in the future, be available to both Georgetown and Jarrell. He noted, however, that GTSW does not currently have the central office switching technology to record local usage in Georgetown; but, it is estimated that such equipment can be in place within 12 months from the date of a Commission final order herein.

Mr. Chappell further testified that, in the aggregate, customers will not be paying more under the measured service tariff than they are now paying under the flat rate tariff. He explained that GTSW's calculations indicate that there will be a revenue "wash"; however, there will be a shift in who pays the costs. Mr. Chappell testified that with the measured service tariff, customers who use the telephone a great deal will pay more than they did under flat rates, while customers who use the telephone infrequently will pay less.

Mr. Chappell further testified that GTSW is not proposing flat rate EAS on a one-way basis and on a toll basis from the other exchange because this invites abuse of the network. He noted that any number of customer calling "codes" may be employed to avoid paying toll charges by having the call established from the "free calling" end.

Finally, Mr. Chappell testified that GTSW also considered the possibility of providing "packaged" usage, utilizing the toll network, which would permit customers in Georgetown and Jarrell to purchase usage "packages" at rates lower than regular toll rates. Mr. Chappell testified that GTSW rejected this alternative based on its determination that this service alternative is cost prohibitive. He explained that toll calls are routed to Austin for recording purposes and because of the back haul involved, incremental costs are too high to permit bulk usage discounts. Mr. Chappell testified that presently, measured service is only a proposal, but ultimately, GTSW may be able to provide measured service on a packaged basis.

Regarding the issue of refunds raised by Georgetown in its July 20th petition, GTSW takes the position that it should not be required to refund any amounts to its Georgetown customers for the provision of EAS service for the following reasons:

1. GTSW cannot unilaterally determine that it will stop the provision of any service;

2. GTSW has continually provided EAS service to its customers in Georgetown and Jarrell as it is required to do until the Commission issues a final order approving the elimination of EAS service;

3. Following the request by the City Council of Georgetown to eliminate EAS, GTSW did not delay the filing any longer than necessary to obtain the necessary information to determine if such a filing is in the public interest; and

4. To require GTSW to make the requested refunds would be to engage in retroactive ratemaking, which is illegal in this state.

2. City of Georgetown

It is the position of the City of Georgetown that EAS between the cities of Georgetown and Jarrell should be eliminated as soon as possible. As noted in the Procedural History, on July 20, 1983, Georgetown filed a petition setting forth the following information and prayer for relief. (This information was introduced into the record through the direct testimony of Georgetown witness Jim Colbert.):

a. On August 24, 1982, the City Council of Georgetown passed a resolution requesting GTSW to eliminate EAS between Georgetown and Jarrell, Texas.

b. In September and October, 1982, a poll was conducted by GTSW and Georgetown city officials to determine whether or not the majority of Georgetown and Jarrell customers wanted EAS discontinued. Of the 3,435 Georgetown customers responding to the survey, 3,016 customers requested the elimination of EAS while 419 customers requested its retention. On the other hand, of the 205 Jarrell customers responding to the survey, 8 customers requested the elimination of the service and 197 requested its retention.

c. GTSW informed the City of Georgetown that the results of the September and October 1982 survey would be reported to the Commission.

d. On June 14, 1983, the Georgetown City Council passed a second resolution requesting that EAS be eliminated based on the results of the poll taken in September and October of 1982. The City Council made this second resolution retroactive to August 24, 1982.

e. Based on the foregoing information, Georgetown urged the Commission to take the necessary steps to eliminate EAS, and to make such elimination retroactive to the date of the October poll. Georgetown further urged the Commission to require GTSW to reimburse the Georgetown customers for the extra charges they were assessed after they requested the elimination of EAS.

Georgetown presented four witnesses at the hearing in support of its request to eliminate EAS. All four witnesses are Georgetown residents and customers of GTSW. Additionally, Georgetown submitted a petition signed by 112 Georgetown residents requesting the same.

Mr. Jim Colbert, City Secretary of Georgetown, Texas, testified regarding the action (cited above) taken by the Georgetown City Council. Mr. Colbert testified that the City Council became aware of Georgetown residents' opposition to EAS following GTSW's implementation of its rate increase during the summer of 1982,

when customers began receiving itemized telephone bills. Mr. Colbert testified that until that time, customers were apparently unaware that the charge previously listed under "Local Service" included a fee for EAS. Mr. Colbert further testified that Georgetown customers oppose EAS because they do not wish to be charged for a service they never use, or use so infrequently that it would be cheaper for them to pay regular toll rates for any calls made from Georgetown to Jarrell, than to pay the flat EAS rate each month. This position was mirrored in the testimony of Georgetown witnesses Robert J. Mills, Frank Parmenter, and J. S. Maidlow.

Finally, in closing arguments, Mr. Maidlow argued that the EAS arrangement now existing between Georgetown and Jarrell is discriminatory and should be eliminated. He also stated that, in his opinion, GTSW did not act in a timely manner to eliminate EAS.

3. City of Jarrell

Althougn the City of Jarrell called no witnesses, in closing arguments Ms. Leona Kokel (intervenor on behalf of Jarrell) argued that Jarrell's position is that the Commission's action herein should result in the best service possible provided in the most cost effective manner. Ms. Kokel argued that if EAS is discontinued, telephone service for Jarrell customers will be severely crippled because their local calling scope will not include calls to medical, business, and church entities, as most of these are located outside of Jarrell. Ms. Kokel further argued that while Jarrell is opposed to the elimination of EAS, if the Commission determines that this should be done, consideration should be given to special rates for Jarrell, as Jarrell customers will then be getting little for their money. Specifically, they will only be able to call about 350 customers. Finally, Ms. Kokel noted that Jarrell is small, and as such it is hard to compete with the larger group of [Georgetown] customers.

4. Commission Staff

The Commission staff takes the position that EAS should be eliminated between Georgetown and Jarrell. The staff proposes that the Georgetown exchange be one flat rate area, and that the Jarrell exchange be another flat rate area, with measured toll service calls between the two exchanges. Staff witness Jo Shotwell testified regarding the staff's position in this case. She explained that EAS is the provision of toll free telephone service between two exchanges based on a flat monthly charge which does not vary with customer usage. She noted that, historically, in Texas as towns grew and commerce between them increased the telephone calling between them grew. The growth of exchanges, consolidation of school districts, and the relocation of trade centers all serve to increase the calling interest between two exchanges. According to Ms. Shotwell, during the sixties, many telephone companies converted short-haul toll routes to EAS routes. At that time, preceding computerization, most telephone companies were finding high volume short-haul toll routes were not profitable because of the high cost of manually ticketing, completing, and billing toll calls. Generally, the cost to ticket and bill short-haul toll calls equaled or exceeded the revenue produced. Therefore, it seemed reasonable to consider EAS. In most situations, the companies

negotiated small rate increases to the existing flat rate in conjunction with an EAS conversion. The rate increases were normally non-optional and were at some point consolidated into the basic local exchange rates, thus, not appearing as a separate charge. As a result of the implementation of computerized systems, the cost of recording and billing a long distance call came down and short-haul toll calls became profitable. As a result, telephone companies found it more reasonable to retain long distance toll charges between exchanges instead of expanding the provision of EAS. There is now considerable resistance by most telephone companies to the expansion of EAS, due in part to the increased cost of facilities needed to provide the service and also the application of a non-usage sensitive (flat rate) charge for a service where usage varies widely.

Regarding the application filed herein, Ms. Shotwell testified that according to a poll conducted by the company in early 1983, 96.1 percent of the Jarrell respondents wished to retain EAS service, while 87.8 percent of the Georgetown respondents wished to discontinue the EAS service. She noted that while the staff was not a part of the planning or administration of the questionnaire, the results have been analyzed and appear reasonable. Over 83 percent of the 3,640 total respondents indicated a desire to eliminate the EAS service.

Ms. Shotwell addressed three alternatives which might be considered in this case. Her first alternative, one-way EAS, was rejected because, in her opinion, a situation of this nature would allow Georgetown customers to "code" call (perhaps in the form of a person to person call), which would signal the called Jarrell customers to return the call on a toll free basis. In this scenario, additional central office equipment would be required to handle the increased traffic from Jarrell to Georgetown, and a long distance operator's time would be needed for a non-revenue producing call. She felt that the Commission should avoid creating situations that have the potential to cause inefficient network use as well as the potential for deceptive practices by the customer.

Ms. Shotwell also addressed the option of no change in the existing EAS service. While she felt that an argument could be made that the customers of both exchanges apparently had a desire for the service in the past and did accept a small rate increase in order to obtain the additional calling scope, she was also concerned about the possibility that if this service is discontinued at this time and future residents of either city find that the service would be beneficial, the Commission would again be faced with a request for expanding EAS.

Ms. Shotwell also addressed the message toll service option, which would place the choice of placing and paying for a call from the exchange level to the individual customer level. In other words, the customer would have a choice of placing a toll call or not. Under the existing non-optional flat rate service, customers who do not place calls are charged for the service. However, measured toll rates apply only to customers who place calls. Ms. Shotwell felt that measured toll service is a more equitable pricing plan. The present charge for a

direct dialed toll call between these towns is 10 cents for the first minute and 8 cents for additional minutes (station to station, weekday). The company has estimated that the expense of minor equipment rearrangements for the conversion from EAS to toll will be $1,600.

Ms. Shotwell disagreed with the local measured service plan the company proposed. Her disagreement fell into two categories: (1) the current central office technology in the Georgetown exchange is the older step by step technology which would require measuring equipment to be added. The estimated cost of adding measuring capabilities is $153,000. In the past the staff has been consistent in approving measured service only in exchanges where measuring capabilities existed through state-of-the-art switching equipment. Ms. Shotwell felt that she could not economically support this expenditure since the investment would be capitalized and would be paid for by all Texas ratepayers. (2) The Company proposal does not include a flat rate option for single line business and residence services. The staff has recongized in past measured service cases that measured service is not of benefit to all users of the network;therefore, the staff has insisted that a premium flat rate charge remain in the tariff as an option to the customers who desires unlimited usage at a flat rate.

It was Ms. Shotwell's final preferred alternative that EAS be discontinued between Georgetown and Jarrell, and that long distance charges apply.

B. Examiner's Review and Recommendation

[1] The examiner finds that the weight of the testimony in this case shows that EAS should be discontinued between Georgetown and Jarrell, and that long distance charges should apply as recommended by the staff. Long distance toll service is an optional, usage-sensitive offering which represents an equitable pricing structure in this circumstance. A usage-sensitive plan such as long distance toll is a cost-based service while EAS is not currently cost-based given today's pricing
[2] techniques. It is unfair and inequitable to force the Georgetown residents to pay a higher EAS rate when most of residents (at least those responding to the survey) have no desire to call Jarrell at any other rate than long distance toll, so that Jarrell customers will have the option at all times to call Georgetown at EAS rates. Accordingly, the examiner recommends that the staff recommendations in this case be adopted. (The examiner would note that all parties herein with the exception of Jarrell agreed with the staff recommendations.)

However, in accordance with the Commission's decision in Petition of City of Jacksonville, Docket No. 5250, ____P.U.C. BULL. _____ (January 20, 1984), the examiner would also recommend that GTSW be required to prepare a study which outlines the cost, on a compensatory basis, of one-way EAS between Jarrell and Georgetown, and that the results of this study be reviewed by the Commission staff. Upon approval of the cost study by staff, GTSW should be required to survey the residents of Jarrell on whether they prefer one-way EAS rates which are based on the cost study, or local rates along with long distance service to Georgetown. If one-way EAS is preferred by the majority of those surveyed, GTSW should be required to submit a proposed tariff which would allow one-way EAS for Jarrell residents.

[3] Finally, regarding the issue of the proposed refunds to Georgetown residents, the examiner would recommend that GTSW not be required to refund any amounts to said customers for the provision of EAS for the following reasons. First, the Georgetown customers have not been overbilled, GTSW provided EAS service and charged rates therefor pursuant to its lawful tariff approved by this Commission. Second, EAS service was actually provided the Georgetown customers, and while said service is no longer desired, it apparently was in the past. Third, the record does not support a finding that there was unnecessary delay on the part of GTSW in filing the request to eliminate EAS once the company learned this was the desire of many of its affected customers. The examiner would note that while many customers want EAS between Jarrell and Georgetown eliminated, this position is not unanimous; therefore the examiner believes GTSW acted properly in not filing this application until after the survey results were received. According to Georgetown witness Jim Colbert, the survey results were not completed until January 1983. This application was filed on July 7, 1983. Based on the evidence presented, the examiner does not believe the record would support a finding that the six month interim period constitutes unreasonable and unnecessary delay. Finally, the examiner would note that had more immediate action been desired, the City of Georgetown had the option of itself initiating Commission review of this issue.

III. 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. On July 7, 1983, General Telephone Company of the Southwest (GTSW) filed a tariff amendment (T-126-3) requesting Commission approval to eliminate extended area service (EAS). On July 19, 1983, the tariff filing was docketed and assigned Docket No. 5258.

2. A prehearing conference was held on August 9, 1983, at which time procedural dates were agreed upon.

3. GTSW was ordered to give publication of the petition, and did so according to the examiner's order.

4. By an order dated September 6, 1983, the City of Georgetown (Georgetown) and one GTSW customer , Jack Maidlow, were granted intervenor status in this case. Intervenor status was granted the City of Jarrell (Jarrell) at the hearing on the merits.

5. A hearing was held on this docket on December 5, 1983, at which time all parties appeared.

6. Georgetown believes that EAS services are funded disproportionately by the residents of Georgetown and that those desiring to call Jarrell should pay toll charges for the privelege.

7. Jarrell opposes the discontinuance of EAS between Georgetown and Jarrell.

8. GTSW conducted a survey in the area which showed that 87.8 percent of the 3,435 Georgetown residents surveyed support elimination of EAS service, and 96.1 percent of the 205 Jarrell residents surveyed wish to retain the EAS service.

9. GTSW supported a measured rate service in this case because a measured service tariff will cause customers who use the telelphone a great deal to pay more than they did under flat rates, while customers who use the telephone infrequently will pay less, thus placing cost on the cost causer.

10. Staff witness Jo Shotwell supported the elimination of EAS service with reversion back to long distance rates between the two cities.

11. The evidence shows that continuation of EAS services in this case is not fair and equitable in that EAS service does place a disproportionate burden on the residents of Georgetown, a burden which those residents no longer wish to shoulder.

12. The local measured service plan proposed by GTSW should not be instituted in this case because of the fact that current central office technology in both exchanges is the older step-by-step technology which would require measuring equipment to be added, and because this type of service is not offered as an option to the customer who desires unlimited usage at a flat rate, but will apply to all customers in both cities.

13. The evidence in this case indicates that the preferred alternative offered in evidence herein is the elimination of EAS service with a return to message toll service.

14. It it reasonable to require GTSW to prepare a study which outlines the cost, on a compensatory basis, of one-way EAS between Jarrell and Georgetown. It is reasonable to require the Commission staff to review the results of this study; and upon approval to require GTSW to survey the residents of Jarrell on whether they prefer one-way EAS rates which are based on the cost study, or local rates along with long distance service to Georgetown. If one-way EAS is preferred by the majority of those surveyed, it is reasonable to require GTSW to submit a tariff which would allow one-way EAS for Jarrell residents.

15 It is reasonable not to require GTSW to make any refunds to the Georgetown residents for the provision of EAS service for the reasons set forth by the examiner in Section II (B) of the report.

B. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to Sections 16 and 18 of the Public Utility Regulatory Act, (the Act) Tex. Rev. Civ. Stat. Ann. art. 1446c, (1982).

2. The publication in this docket was properly accomplished pursuant to Section 43(a) of the Act.

3. Tariff No. T-126-3 should be approved because it is just and reasonable, not unreasonably preferential, prejudicial or discriminatory, and is sufficient, equitable, and consistent in application to each class of customer.

Respectfully submitted,

Shelia A. Bailey
SHELIA A. BAILEY
HEARINGS EXAMINER

APPROVED AT AUSTIN, TEXAS, on this the 17th day of January, 1984.

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

js

GENERAL TELEPHONE COMPANY
OF THE SOUTHWEST

TEXAS GENERAL EXCHANGE TARIFF
SECTION 6

LOCAL EXCHANGE RATES

MEASURED SERVICE - GEORGETOWN AND JARRELL

Exchange Access			Monthly Rate(1)
Measured Service Local Exchange Access Arrangement (2)			
Business.....	NMOUSB1CO	83 (3)	11.80
	NMOUMSB1CU	84	11.80
Residence.....	NMOUMSR1CO	30 (3)	4.50
	NMOUMSR1CU	31	4.50

Usage Rates for Originated, Completed Calls

Over	Up to and Including	Band	Full Rate Period Set Up	Full Rate Period Each Minute
0	7 miles	A	$ .025	$ .015
7	14 miles	B	.035	.021
14	21 miles	C	.050	.030
21	28 miles	D	.070	.042
28		E	.090	.054

Mileages associated with the Inter Wire Center usage rates are measured wire center to wire center using the V & H Coordinates procedure.

Rate Discount and Application Period

11 P.M. - 7 A.M.(4) Monday through Friday.....40% Discount
11 P.M. Friday - 7 A.M.(4) Monday.....40% Discount
All Day Jan. 1, July 4, Labor Day, Thanksgiving, and Christmas...40% Discount

(1) See Section 16 for applicable touch call line rate.
(2) Does not include telephone.
(3) To be used in association with Telephone Company provided instrument.
(4) Up to, but not including.

ISSUED EFFECTIVE

By Richard D. Funk, Vice President--Revenue Requirements
2701 South Johnson Street, San Angelo, Texas 76901

EXAMINER'S EXHIBIT I

DOCKET NO. 5258

APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST TO ELIMINATE EXTENDED AREA SERVICE BETWEEN THE GEORGETOWN AND JARRELL EXCHANGES	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 sytled application was processed in accordance with applicable statutes by an examiner who prepared and filed a Report containing Findings of Fact and Conclusions of Law, which Examiner's Report is ADOPTED with the following modification:

> Tariff No. T-126-3 eliminating EAS between the cities of Georgetown and Jarrell is hereby APPROVED, effective 90 days from the date of this Order.

The Commission further issues the following Order:

> General Telephone of the Southwest (GTSW) shall prepare a study which outlines the cost, on a compensatory basis, of one-way EAS between Jarrell and Georgetown. The results of this study shall be reviewed by the Commission staff. Upon approval of the cost study by staff, GTSW shall survey the residents of Jarrell on whether they prefer one-way EAS rates which are based on the cost study, or local rates along with long distance service to Georgetown. If one-way EAS is preferred by the majority of those surveyed, GTSW shall propose a tariff which would allow one-way EAS for Jarrell residents.

SIGNED AT AUSTIN, TEXAS on this the 15th day of February, 1984.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
ALAN R. ERWIN

SIGNED: _____
PHILIP F. RICKETTS

SIGNED: _____
PEGGY ROSSON

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

PETITION OF THE CITY OF SAN ANGELO FOR THE REMOVAL OF THE EXTENDED AREA SERVICE CHARGE FROM GENERAL TELEPHONE COMPANY OF THE SOUTHWEST'S RATES IN SAN ANGELO, TEXAS	§ § § § §	DOCKET NO. 5898

September 23, 1985

This docket involves a request by the City of San Angelo to terminate the charge for Extended Area Service ("EAS") to surrounding towns. The scope of the hearing was expanded to consider the termination of not only the EAS charge, but also EAS service. The Commission denied the request because a majority of the residents wanted to retain EAS service, and a community of interest existed between San Angelo and the surrounding towns sufficient to merit retention of EAS.

[1] PROCEDURE--PLEADINGS--ADEQUACY/CONSEQUENCES OF ERRORS OR OMISSIONS
PROCEDURE--NOTICE--ADEQUACY/CONSEQUENCES OF ERRORS OR OMISSIONS
RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE

Scope of hearing included issues of termination of the Extended Area Service ("EAS") charge and service. Petitioners' pleadings related only to the EAS charge and requested only general relief. The scope was not limited to these pleadings because: (1) adequate notice had been provided to consider both the EAS charge and the service; (2) both issues were so intertwined with one another that one could not be discussed without the other; and (3) regulatory efficiency would be enhanced to consider both issues in the same hearing. (p. 1332)

[2] PROCEDURE--NOTICE--ADEQUACY/CONSEQUENCES OF ERRORS OR OMISSIONS
RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE
RATEMAKING-RATE DESIGN--TELEPHONE--LOCAL MEASURED SERVICE

Consideration of local measured service as an alternative to extended area service was not considered a viable alternative because: (1) notice was not provided pursuant to PURA § 43(d) to consider the merits; and (2) the rate structures for both services are not comparable. (p. 1333)

[3] RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE

Request to terminate solely the Extended Area Service ("EAS") charge was denied as not being in the public interest because elimination of only the charge would not eliminate the requirement to provide EAS service. (p. 1333)

[4] RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE

Request to eliminate Extended Area Service ("EAS") was denied as not being in the public interest because: (1) reliability of the customer survey was questionable; (2) a majority of the residents wanted to retain EAS; and (3) a sufficient amount of community interest existed to retain the service. (p. 1334)

[5] RATEMAKING--RATE DESIGN--TELEPHONE--EXTENDED AREA SERVICE

The evidence in this docket established that a community of interest existed to retain Extended Area Service. A community of interest exists between two towns when there is a wide-spread commonality between the two towns in identification, business interests, community services--such as hospitals, schools, fire protection, and/or a commonality generated by customers who work in one town and reside in the other. (p. 1335)

Public Utility Commission of Texas
7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

Philip F. Ricketts
Chairman
Peggy Rosson
Commissioner
Dennis L. Thomas
Commissioner

August 14, 1985

TO ALL PARTIES OF RECORD

RE: Docket No. 5898--Petition of the City of San Angelo for Removal of the Extended Area Service Charge from General Telephone Company of the Southwest's Rates in San Angelo, Texas

Ladies and Gentlemen:

Enclosed is a copy of the Examiner's Report and proposed Final Order submitted to the Commission in the above styled and numbered proceeding. The Commission will consider this case during a regular open meeting on Thursday, September 12, 1985, beginning at 9:00 a.m., at the Commission offices, 7800 Shoal Creek Blvd., Austin, Texas.

Exceptions and requests for oral argument, if any, are due no later than 4:00 p.m. on Friday, August 30, 1985. Replies to exceptions, if any, are due no later than 4:00 p.m. on Friday, September 6, 1985. An original and ten (10) copies of all exceptions and replies shall be filed with the Commission filing clerk by the deadline set forth above. Further, any party filing exceptions and/or replies shall forward a copy of the same to all parties of record. Parties are reminded that if oral argument is desired, such must be specifically requested.

You may attend the meeting if you desire, but are not required to do so, unless you desire to make oral argument before the Commissioners. A copy of the Final Order issued by the Commission will be sent to you after the meeting.

I have made the following recommendations herein. For reasons set forth in the Examiner's Report, I have recommended the City of San Angelo's petition (as originally filed and as modified or clarified at the hearing on the merits) be denied, and that the existing extended area service (EAS) arrangement between the City of San Angelo and the communities of Miles, Carlsbad and Eola be continued without modification at this time. I have further recommended that General Telephone Company of the Southwest's (GTSW) EAS rate structure and revenues be closely scrutinized in the company's next general rate case.

Sincerely,

Shelia A. Bailey

Shelia A. Bailey
Administrative Law Judge

DOCKET NO. 5898

PETITION OF THE CITY OF SAN ANGELO FOR REMOVAL OF THE EXTENDED AREA SERVICE CHARGE FROM GENERAL TELEPHONE COMPANY OF THE SOUTHWEST'S RATES IN SAN ANGELO, TEXAS	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Procedural History

On August 27, 1984, the City of San Angelo (San Angelo, the city or the municipality) filed a petition for the removal of the extended area service (EAS) charge, for service between San Angelo and the Miles and Carlsbad exchanges, from General Telephone Company of the Southwest's (GTSW) rates in San Angelo, Texas. As will be discussed below, the Eola exchange, served by Central Texas Telephone Cooperative, Inc. (CTTC) would also be affected by San Angelo's petition herein. The petition was assigned Docket No. 5898. On September 12, 1984, a motion to intervene was filed by GTSW. A motion to intervene was also filed by CTTC on October 15, 1984. Additionally, on November 1, 1984, Ms. Diana Morey submitted a motion to intervene on behalf of the Carlsbad community. On November 13, 1985, a motion was filed by the general counsel's office requesting that a regional hearing be conducted herein.

A prehearing conference was conducted on November 15, 1984. Appearances were made by Ms. Glenda Beard for GTSW, Mr. Dale Johnson for CTTC, and Ms. Dineen Majcher for the Commission general counsel and staff representing the public interest. Due to flight scheduling problems, no one appeared at the prehearing on behalf of the City of San Angelo. The following events transpired at the prehearing conference. First, GTSW, CTTC and the Carlsbad community were granted intervenor status in this proceeding. Second, Tom Green County Farm Bureau noted for the record that it might seek to intervene. Third, the general counsel's motion for a regional hearing to take public comment regarding San Angelo's petition was granted, and a tentative regional hearing date of February 18, 1985, was established. Fourth, GTSW noted for the record that while the telephone company prepared the survey used by San Angelo in determining whether or not to file this petition, the City of San Angelo refused GTSW's offers to assist in conducting the survey and collecting the data. Fifth, the hearing on the merits was scheduled to commence on February 27, 1985, and deadlines were established for conducting discovery and submitting prefiled testimony.

By an order entered December 19, 1985, a regional hearing was scheduled to commence on February 18, 1985, at the San Angelo Convention Center, from 3:00 p.m. to 6:00 p.m. The City of San Angelo was directed to publish notice of the public comment meeting at least once between February 11 and February 17, 1985, in local newspapers of general circulation in San Angelo and the following

communities directly affected by the petition: Carlsbad, Eola, and Miles. On January 21, 1985, Ms. Martha Petrey filed a motion to intervene on behalf of the Miles community. On February 15, 1985, Mr. Bill Helwig filed a motion for extension of time to prefile testimony, noting that he had only recently been retained as attorney of record to represent the intervening communities of Carlsbad and Miles in this proceeding. This request was granted and Carlsbad and Miles were allowed to prefile testimony on February 21, 1985, rather than February 13, 1985.

The regional hearing or public comment meeting was conducted as scheduled with Hearings Examiner Charmaine Rhodes presiding on behalf of the undersigned Administrative Law Judge (ALJ). The meeting was attended by the following representatives: Alfred Herrera--Commission General Counsel's Office; Suzie Sutherland--Commission Consumer Affairs Office; E. L. Langley--President, GTSW; Glenda Beard--Associate General Counsel GTSW; Teresa Special--San Angelo Assistant City Attorney; Don Richards--Attorney for CTTC; and Bill Helwig--Attorney for the Communities of Carlsbad and Miles. Additionally, approximately 350 people were present at the meeting, of which 40 persons presented oral comments on San Angelo's proposal. Eleven persons spoke against EAS, and 29 spoke in favor of retaining it. Additionally, the following petitions were submitted at the regional hearing in support of retaining EAS:

Petition	Number of Signatures
San Angelo - Carlsbad Combined Petition	764
San Angelo Individuals	3,827
Hospitals	1
Eola Business/Commercial	14
Carlsbad Business/Commercial	6
Miles Business/Commercial	41
San Angelo Business/Commercial	528
Law Enforcement (Concho, Runnels and Tom Green Counties)	3
Volunteer Fire Department (Wall, Mereta, Miles, Rowena, Carlsbad, Grape Creek, Water Valley, Eola, Eden, and Paint Rock)	10
School Districts (Wall, Veribest, Miles, Grape Creek, Water Valley, and Eden-Eola)	6
Trade/Professional Association	3
Commissioners Court (Concho and Runnels)	2
Miscellaneous (Two Petitions)	590
Total	5,795

Also presented at the regional hearing were 20 individual written statements in favor of retaining EAS.

Further, petitions and a multitude of individual statements in favor of retaining EAS were received by the Commission. The Commission also received a petition containing 80 signatures of persons supporting the request for removal of the EAS charge from GTSW's rates in San Angelo.

The hearing on the merits was convened on February 27, 1985, with appearances by Ms. Teresa Special and Ms. Margaret Ward for the City of San Angelo; Ms. Glenda Beard for GTSW; Mr. Bill Helwig for the Carlsbad and Miles communities; Mr. Dale Johnson and Mr. Don Richards for CTTC; and Ms. Dineen Majcher for the Commission staff representing the public interest. By stipulation of the parties a video tape of the regional hearing was admitted into the record as Joint Exhibit No. 1. The ALJ also pointed out for the benefit of the parties that the consumer comments received are part of the public comment record herein. Following is a discussion of the evidence presented at the hearing and the ALJ's recommendation regarding this matter.

II. Opinion

A. Jurisdiction

The Commission has jurisdiction over this matter pursuant to Sections 16(a), and 18(b) of the Public Utility Regulatory Act (PURA or the Act), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1984).

B. Positions of the Parties

1. San Angelo

By its petition herein San Angelo seeks the removal of the EAS charge from the monthly bills of GTSW customers residing within the city. Five witnesses testified on behalf of the City of San Angelo: Mr. Stephen Brown--City Manager (San Angelo Exhibit 1), Mr. Jesse E. Stanford--Assistant City Manager (San Angelo Exhibit 2), Ms. Carline Tucker--City Councilwoman for Single Member District No. 4 (San Angelo Exhibit 3), Mr. Bill Thompson--City Councilman for Single Member District No. 1 (San Angelo Exhibit 4), and Ms. Sara Lara--San Angelo resident (San Angelo Exhibit 5).

According to the evidence presented, the EAS issue was brought to the attention of the City Council by Ms. Lara during the council's April 17, 1984, meeting.[1] Ms. Lara testified herein that she is opposed to EAS because it is unfair to require the residents of San Angelo to apply for a service they do not use.

---

[1]Councilwoman Tucker testified that she first began hearing from her constituents regarding this matter in 1982 when the EAS charge began being listed as a separate charge on customers' bills.

Mr. Brown testified that as a result of the concern voiced by Ms. Lara at the April 17, 1984 meeting, the City Council directed him to organize a survey of GTSW customers to get their opinion regarding the retention of EAS. According to the evidence herein, sample survey cards were presented by GTSW at the City Council's May 1, 1984, meeting. Although the survey cards were discussed at the City Council's May 1 meeting, Mr. Stanford testified that the city did not have anything to do with the actual wording on the cards utilized in the survey. Neither Mr. Brown, Councilwoman Tucker, nor Councilman Thompson could recall whether or not the wording on the survey card was reviewed by the city prior to it being mailed; however Councilwoman Tucker noted that the survey cards used were different from the samples presented to the City Council at the May 1 meeting. A copy of the survey cards mailed to the customers as a stuffer in their bills is attached hereto as ALJ's Exhibit No. 1. The survey results, as presented by San Angelo, are set forth below:

	Number of customers	For EAS	Against EAS
San Angelo	41,978	1,414	6,157
Carlsbad	435	149	4
Miles	635	345	10
*Eola	220	143	0

*Note: This phone system is owned by the Central Texas Telephone Cooperative, and CTTC conducted their own survey.

Mr. Stanford testified that he presented the survey results to the City Council on August 21, 1984, at which time the council voted 6 to 1 to adopt a resolution to petition the Commission for removal of the EAS charge from the bills of GTSW's San Angelo customers. Councilmembers Tucker and Thompson testified that they voted to petition for the removal of the EAS charge on their belief that such is the desire--according to survey results--of the majority of the San Angelo residents.[2] Councilman Thompson also testified that it is his "suspicion" that a minority of the telephone service subscribers in San Angelo utilize EAS.

Both councilmembers testified that the survey utilized herein was somewhat confusing in that it gave the impression that the customers had to choose between two money amounts rather than whether or not to retain EAS; however, neither believed the survey was so confusing that customers could not express an opinion regarding the retention of EAS. On cross-examination Councilwoman Tucker noted that she believed "some" persons responding to the survey were actually choosing between EAS at different rates rather than whether or not EAS should be retained.

[2]The record reflects that there are approximately 81,000 residents in San Angelo. According to the testimony of Mr. Brown while 81 percent of those responding to the survey opposed retaining EAS, only 18 percent to 20 percent of the residents responded to the survey.

Councilmembers Tucker and Thompson and Mr. Brown each testified that it was their intent in filing this petition that the EAS charge, not the service, be eliminated. However, at the hearing each testified that if the charge could not be removed without eliminating the service, then the service should also be eliminated.

In this regard Councilman Thompson testified that it is equitable for the "user" to pay for the service. He testified that he has a farm located in Carlsbad from which he makes a substantial number of calls into San Angelo; however, he testified, the San Angelo residents should not be required to subsidize his calls. Councilman Thompson suggested that EAS be retained, but only on a subscription basis.

Mr. Stanford concurred that the service should be eliminated if the charge alone could not be, testifying that San Angelo pays between $5,000 and $7,000 annually for EAS service and such is not used by the city on a regular basis.

Further, Councilwoman Tucker testified that while there admittedly is a substantial community of interest from outlying areas into San Angelo, there is only a small community of interest from San Angelo to the outlying areas.

In summing up the position of the City of San Angelo in this proceeding, counsel argued in the city's post-hearing brief that:

> The city did not initiate this petition with the intent to hurt its neighbors. It was initiated in response to a request by its citizens. There is an inequitable allocation of costs in EAS situations. Simply put, many people are paying for a service for which they have no need. The argument is that the smaller communities do need the service and since they have economic and social contacts in San Angelo, the cost should be borne by all rather than placed on the user. There are two flaws in this approach. First, other communities close to San Angelo do not have the service. If EAS is truly necessary, then why are these communities not also served? Second, the professed goal of the Public Utility Commission is for the user to bear the cost. The continuation of EAS in this case is in opposition to that goal.
>
> Other options are available to people who need to reduce the cost of their long distance bills. These options place the burden of cost on those who benefit. The city favors this type of approach to reducing long distance costs.
>
> The telephone subscribers in the San Angelo exchange bear over ninety-two percent (92%) of the cost of this service. This is an inequitable distribution, noted even in the staff's testimony. However, even if the cost were more evenly spread out, some would still be paying without benefiting. The city is attacking the premise that any telephone subscriber should subsidize another.
>
> If the Public Utility Commission position is actually that a one-sided community of interest is sufficient to keep EAS, then this standard is simply not fair and we ask that you reconsider this position carefully. When a clear majority of respondents have indicated a desire to eliminate EAS, then their wishes should be paramount. The issue is really freedom of choice. Those who choose to live outside the City of San Angelo and use EAS have that freedom,

those who live in San Angelo are denied freedom of choice under the present system.

(San Angelo's Brief at 19 and 20.)

2. GTSW

GTSW has taken a "neutral" position regarding this matter. GTSW Witness A. M. Chappell testified that: "Our company stands ready to provide whatever service our customers request so long as it is deemed in the public interest by the Texas Public Utility Commission and provided the company is adequately compensated for the provision of the service." (GTSW Exhibit 2 at 3.)

Explaining the history of the EAS situation at issue herein, Mr. Chappell testified that EAS service between San Angelo, Carlsbad, and Miles was established in 1969. EAS service between San Angelo and Eola was established in 1971. (Id., at 5.) The record is unclear as to exactly who requested the implementation of EAS service between San Angelo and these three communities; however, according to Mr. Chappell even though there are no specific records indicating the request was made by San Angelo, GTSW traditionally negotiated all changes in service with each City Council. Mr. Chappell testified that he is "sure that this was the case with San Angelo." (Id., at 6.)

Mr. Chappell further testified that prior to July 1982--the date EAS charges began appearing separately on customer bills--GTSW did not separately identify EAS charges; rather EAS costs were included in total operating costs and spread over the total body of ratepayers. According to Mr. Chappell this contributed to the misconception on the part of many ratepayers that EAS was a "free" service. (Id., at 7.) At the hearing, Mr. Chappell testified that the current monthly EAS additive for one-party telephone subscribers is as follows: San Angelo--$1.35; Miles--$4.95; and Carlsbad--$4.95. EAS service to Eola is provided pursuant to a contractual arrangement between GTSW and CTTC. The monthly EAS rates paid by CTTC customers are $.50 for residential customers and $.75 for business customers.

Regarding the survey conducted herein, Mr. Chappell testified that the wording on the survey forms was determined by GTSW, but was reviewed and approved by the city before being mailed out. He further testified that the City of San Angelo made the determination to send the survey cards along with each customer's bill and not to include return postage. (Id., at 8-9.)

Mr. Chappell also testified regarding four possible alternatives for resolving the matter at issue herein. Alternative one, Mr. Chappell testified, is to continue the current flat rate EAS service. Alternative two--discontinue EAS service and convert all traffic to toll. According to Mr. Chappell:

> Alternative two would make all intercity calls toll calls with the customer having to dial "1" or "0" before the seven digit number dialed. Rates for a 3-minute call between San Angelo and Carlsbad would be approximately $.29 and between San Angelo and Miles,

> approximately $.41. This alternative would require a minimum of 120 days from the date of the final order for GTSW to make the necessary changes in augmenting toll facilities to accommodate this EAS traffic. The advantage to this option is that it places the cost for the service directly on those who use the service.

(Id., at 11-12.)

Alternative three--adopt a form of "packaged toll" such as the Expanded Community Calling (ECC) Plan presently approved for The Colony, a Dallas suburb. Regarding this alternative Mr. Chappell testified that:

> Alternative three would provide a form of "packaged" toll whereby a customer buys, in advance, a minimum amount of usage for a set fee, much like WATS service. In this case, the customer may pay for a minimum of 100 minutes of use for a monthly fee of $6.00. All minutes in excess of the 100 are charged at the rate of $.06 per minute. Demand for this service would be limited since it offers the customer very little economic incentive. Toll rates for Carlsbad and Miles are $.09 and $.13, respectively, per minute of use and these rates may be discounted up to 40% depending on time placed.

(Id., at 12.)

Alternative four--offer optional measured service to all customers in San Angelo, Miles, and Carlsbad. Regarding this alternative, Mr. Chappell testified that:

> Alternative four, "Optional Measured Service" or "OMS" charges the customer a rate of approximately 50 percent of the normal flat rate for a line to access the local network. The customer then pays individually for each call depending on the duration of the call and the distance involved. The advantages of this type of service are obvious. If customers do not make EAS calls, they do not pay for them. Indeed, if customers do not make many calls, either EAS or local, OMS offers significant potential savings. GTSW already offers this service in the Dallas/Ft. Worth and Houston metropolitan areas and the service has been well received.

(Id., at 12-13.)

Finally, Mr. Chappell testified that one-way EAS was not included as an alternative because:

> Our studies indicate that because of the "common" costs that must be recovered, total revenues needed for a one-way EAS arrangement are close to the total revenues needed for a two-way EAS arrangement. Allocating all of these costs to one exchange increases the rates to the point where they become prohibitive. We do not consider one-way EAS as a viable alternative from a cost viewpoint.

(Id., at 13.)

3. Central Texas Telephone Cooperative, Inc

Seven witnesses testified on behalf of CTTC in this proceeding: Mr. George Crownover--President of Tom Green National Bank (CTTC Exhibit 2), Mr. A. H. Denis--Tom Green County resident (CTTC Exhibit 3),

Ms. Ollene Thornton--General Manager of CTTC (CTTC Exhibit 4), Mr. Joey Henderson--San Angelo resident (CTTC Exhibit 5), Mr. Larry Powell--Eola resident (CTTC Exhibit 6), Mr. Rodney Ripple--President of the Tom Green County Farm Bureau (CTTC Exhibit 7) and Mr. Curtis H. Hunt--Southwestern Engineering Company Vice-President (CTTC Exhibit 8).

Mr. Crownover testified that a community of interest does exist between San Angelo and the communities of Miles, Carlsbad, and Eola. He testified that these communities are all a part of the immediate trade area for San Angelo, and the benefit of EAS service is a necessity for the residents of said communities as they rely on San Angelo for many of their needs: professional services, jobs, shopping, recreation, and educational interests. Mr. Crownover also testified that EAS is important to some businesses in San Angelo as many financial institutions have a large majority of their customers who reside outside of San Angelo.

Mr. Denis testified that he is a farmer, rancher, businessman and President of the Board of Trustees of the Wall Independent School District and EAS is important to him in all respects. He testified that his residence telephone service is provided by GTSW through the San Angelo exchange and his farm and ranch office, though located on his property, is on the Eola exchange serviced by CTTC. Mr. Denis noted that if EAS is eliminated, then the dozens of calls he makes each day between his residence and business office will all be toll calls. He further noted that without EAS the Wall School District will be faced with additional costs simply to call students, teachers or parents.

Ms. Thornton testified that EAS between Eola and San Angelo was first provided in January 1969 and that CTTC opposes San Angelo's petition herein because, in her opinion, a widespread community of interest exists between the Eola exchange area and the City of San Angelo. Approval of San Angelo's petition would terminate EAS between Eola and San Angelo.

Ms. Thornton also testified that CTTC conducted a survey of the Eola subscribers regarding the continuation of EAS service to San Angelo. According to Ms. Thornton 220 questionnaires were mailed on August 1, 1984, asking subscribers if they were interested in continuing EAS to San Angelo; 143 responded yes and 0 responded no. She further testified that on January 11, 1985, 221 survey questionnaires were sent to Eola subscribers regarding its community of interest with San Angelo; 158 responses were returned and the results indicate a strong community of interest. (See Exhibit 2 accompanying Ms. Thornton's prefiled testimony marked as CTTC Exhibit 4.)

Mr. Henderson testified that EAS is important to the farming and ranching industry in and around San Angelo, noting that his business--Porter Henderson Implement Company (a John Deere farm equipment and service dealership)--receives and makes dozens of calls every day to and from the areas connected by the EAS service. Mr. Henderson testified that the elimination of EAS would harm

the farmers and ranchers because a tremendous amount of the business is based on immediate, impulse calls. According to Mr. Henderson this business would be immediately lost if EAS were eliminated.

Mr. Powell echoed the positions expressed, and previously discussed, by Mr. Crownover, Mr. Denis, and Ms. Thornton; specifically, that a strong community of interest exists between Eola and San Angelo. Mr. Powell testified that:

> EAS has been an important part of the Wall Independent School District. Wall I.S.D. is a rural school system with approximately 550 students enrolled. The large majority of the students live in the rural areas of eastern Tom Green County. In the school personnel records, which I surveyed, I found a total of 75 students' telephones with numbers which are listed in the Miles and Eola telephone exchanges. The administrators, teachers, students, and parents, use EAS service on a daily basis with regard to school activities. The removal of EAS service from the Wall School District not only would financially hinder the school's budget, it also would hit hard on the rural farm families who communicate daily with the school system.
>
> Additionally, the removal of EAS service would hurt the school children socially. Almost all of the school children in the Wall Independent School District use EAS service to communicate with each other with regard to activities which relate directly to academic work, extracurricular activity work, and social matters. If EAS service is removed, the financial burden of toll service would not allow the school children the same privileges enjoyed by other school children, such as those within one exchange, like the City of San Angelo.

(CTTC Exhibit 6 at 3-4.)

Mr. Ripple testified that the Tom Green County Farm Bureau is opposed to San Angelo's petition herein and adopted a resolution to that effect. He testified as follows regarding the Bureau's opposition to the elimination of EAS:

> The rural areas involved in this matter are not isolated towns distinct from the San Angelo trade area. San Angelo is our trade center. All the residents of these areas do the majority of their business in San Angelo, including doctors, lawyers, dentists, hospitals, nursing homes, druggists, banking, repair services, retail and grocery stores, farm and ranch equipment, sheriff, fire and ambulance services. The elimination of the EAS would create an extreme hardship on the residents of the outlying areas . . . .

(CTTC Exhibit 7 at 3.)

Finally, Mr. Hunt testified regarding the results of the traffic study between Eola and San Angelo performed in conjunction with this case. (See Exhibits A-D accompanying Mr. Hunt's prefiled testimony marked as CTTC Exhibit 8.) Mr. Hunt testified that:

> The results of my study indicate that 56% of all Eola customer calling minutes of use were to San Angelo and 59% of all calling minutes of use to Eola customers were from San Angelo. It also

indicated that during the busy hour of the day, 21 simultaneous conversations were occurring between Eola and San Angelo. Eight were from Eola, thirteen were calls from San Angelo.

(CTTC Exhibit 8 at 2.)

Mr. Hunt testified that the results of his study indicate that a strong community of interest exists between Eola and San Angelo.

In its post-hearing brief CTTC argued that the only issue properly before the Commission is whether or not to remove the EAS charge, as this the sole relief requested by San Angelo in its petition. CTTC argued that "consideration of any alternative is not properly before the Commission, is inappropriate, prohibited by State law, and would violate the procedural due process rights including insufficient notice of the other parties to this action." (CTTC Brief at 5.)

CTTC also argued in its brief that San Angelo's petition for relief should be denied for the following reasons. First, a substantial community of interest exists between San Angelo and its EAS communities. (CTTC Brief at 8-15.) Second, CTTC argued, San Angelo's petition is based on an unreliable survey. (CTTC Brief at 16-22.) Third, according to CTTC, even if the survey were acceptable, the strong community of interest factor offsets the survey results. (CTTC Brief at 22-23.) Fourth, CTTC argued that the EAS charge to the San Angelo community falls within the acceptable telephone industry "subsidy" pattern; noting that some amount of subsidization is a commonality in the telephone industry, and that such is acceptable as long as the subsidization is not prejudicial or discriminatory. (CTTC Brief at 23-25.)

4. Communities of Miles and Carlsbad

The following seven citizens from the communities of Miles and Carlsbad testified in opposition to San Angelo's petition and in support of the continuation of EAS service: Mr. R. Allen Williams, Mr. W. A. Smith--Mayor of the City of Miles (Miles/Carlsbad Exhibit 8), Mr. Eugene Cmerek (Miles/Carlsbad Exhibit 9), Ms. Mary Bess Granzin (Miles/Carlsbad Exhibit 10), Mr. Clayton Friend (Miles/Carlsbad Exhibit 11), Ms. Diana Morey (Miles/Carlsbad Exhibit 12) and Mr. Mac Coppinger (Miles/Carlsbad Exhibit 13).

Mr. Williams testified regarding the San Angelo State School's reliance on the existing EAS service. The San Angelo State School is located in Carlsbad, Texas.[3] According to Mr. Williams the State School serves the San Angelo general area. Mr. Williams testified that the San Angelo State School utilizes EAS service very extensively, noting that:

We operated on a fifteen million dollar operating budget per year, some ninety percent of which, or approximately twelve million

[3]The State School was formerly named the McKnight Tuberculosis Hospital before the name was changed to the San Angelo State School. Mr. Williams did not know why the new name was selected, but testified he "assumed" it was done

dollars, is tied up in staff salaries. The additional monies are tied up into the utilities that we purchase and the goods that we purchase.

Many of the goods that we purchase come from local purchase, local purchase being via San Angelo, Texas.

(Miles/Carlsbad Exhibit 7 at 13.)

Mr. Williams also testified that all professional services such as physical therapy, occupational therapy and other medical services are provided by the City of San Angelo.

According to Mr. Williams the State School currently budgets approximately $39,000 annually for telephone service, including the cost for ten trunk lines connecting the school with San Angelo. Mr. Williams testified that if EAS is eliminated, "the cost of dedicated trunks that would not require long distance rate for our staff to call us or us to call our staff or the community of San Angelo would require an expenditure of approximately $30,000 per year" in addition to that currently being spent. (Id., at 14.)

Mr. Williams also testified that approximately 725 of San Angelo State School's employees reside outside of Carlsbad. In Mr. Williams' opinion the elimination of EAS would have a negative affect on the employees' communications with their children, their children's schools and the San Angelo State School when they cannot report to work or will be late. (Id., at 14-15.) Although no formal study was performed, Mr. Williams testified that the employees make approximately 50,000 calls annually to the State School.

Mayor Smith testified that the City Council and the citizens of Miles are 100 percent for keeping the existing EAS arrangement, noting that Miles relies on San Angelo for most of its professional, social, recreational and economic needs. He further testified that approximately 35 percent of Miles' 780 residents are elderly people on fixed incomes, and without EAS service they would be unable to telephone doctors, druggists or other businesses because they would not be able to afford long distance calls. (Miles/Carlsbad Exhibit 8 at 40-43.)

Mayor Smith also testified that pursuant to an agreement the Miles Volunteer Fire Department answers calls in Tom Green County which is approximately three miles outside of the City of Miles. He noted that in this regard EAS service is utilized in fire fighting and fire protection. (Id., at 44-45.) At the hearing Mayor Smith testified that the work of the Miles Fire Department in Tom Green County reflects some community of interest as the primary responsibility for this area rests with the City of San Angelo. This fact was confirmed by City Witness Brown who testified on cross-examination that in 1979 Tom Green County had conveyed a library building to San Angelo in exchange for ambulance and fire protection services. (See also, CTTC Exhibit 1, Deed from Tom Green County to San Angelo.) Finally, Mayor Smith testified that elimination of EAS service would have a negative impact in the area of fire

fighting because the majority of the alarms the fire department attends are in Tom Green County, and absent EAS, each call would be long distance.

Mr. Cmerek testified that he is by occupation a farmer, and he also sells new and used farm equipment. Based on his experience and observations, Mr. Cmerek estimated that residents in rural areas place an average of eight to ten calls daily to urban areas such as San Angelo. Mr. Cmerek testified that the elimination of EAS would be detrimental to the farming community as it would result in additional expenses being incurred to carry on daily business. (Miles/Carlsbad Exhibit 9 at 24-26.) Mr. Cmerek also testified that a community of interest does exist between San Angelo and the outlying rural communities, and that the EAS service currently in place should remain as is. (Id., at 27.)

Ms. Granzin testified that she is employed by the West Central Counsel of Government on Aging in Miles as the Director of Aged Services/Programs. Ms. Granzin testified that the elderly depend heavily on telephone communication for medical, business, religious and recreational needs. She further testified that the removal of EAS would place a handicap on the elderly as Miles has little to offer them other than friendship, excepting a small grocery store. Miles lacks such things as health care, professional, retail and commercial services. (Miles/Carlsbad Exhibit 10 at 4-7.) According to Ms. Granzin the loss of EAS service would impose a financial burden on the elderly as many calls would then be long distance. Ms. Granzin noted that the services offered by the West Central Texas Counsel of Government on Aging are not limited to citizens of Miles, but that some elderly persons in San Angelo also utilize the services. Ms. Granzin testified that removal of EAS would mean that persons in San Angelo wanting to participate in the programs would have to place long distance calls for reservations. (Id., at 9-10.)

Ms. Granzin like other intervenor witnesses testified that a community of interest exists between San Angelo and the outlying communities. When questioned regarding what she meant by community of interest Ms. Granzin testified that: "I think it's an interaction between our little communities on the outlying skirts of San Angelo. It's taking their business into San Angelo and spending it there, with their doctors, hospitals, dentists, druggists, so on and so forth; and San Angelo's caring about the outlying towns."

Mr. Friend testified that his residence is in Miles, Texas, approximately five miles east of Veribest, Texas. According to Mr. Friend he is superintendent of the Veribest Schools, is involved in a business operation and affiliated with an insurance company in San Angelo, and is also engaged in farming and ranching in the Mereta area. Mr. Friend testified that EAS service is important to the operation of the Veribest School District. According to Mr. Friend approximately 20 to 25 percent of the school's staff reside in the Miles Exchange, the remaining 75 percent live in San Angelo. Regarding the student body, Mr. Friend testified that approximately five percent of the students live in the Eola and Miles exchange areas, and approximately 95 percent

live in San Angelo. (Miles/Carlsbad Exhibit 11 at 30-31.) In this regard Mr. Friend also testified that:

> With 95 percent of our parents living on the San Angelo Exchange and me personally on the Miles Exchange, this creates -- would create somewhat of a problem if the extended area service were terminated. Inasmuch as some of the parents work and cannot contact me personally at school, they many times contact me after school hours with a problem arising with, you know, some school-related incident.
>
> The problem would arise in that we would be talking long distance if this service were to be terminated, and, therefore, the effectiveness of our conversations would be limited.
>
> Also, many times my staff members have to contact me, those being on the San Angelo Exchange, when they're sick and have to call in sick or they're not going to be able to be there, and again, this would initiate a long distance call and there would be a toll charge.

(Id., at 31.)

Mr. Friend also testified regarding the community of interest between San Angelo and the outlying communities. (Id., at 32-36.) The elimination of the EAS service would, in Mr. Friend's opinion, impose a hardship on the residents in Miles, Carlsbad and Eola who rely heavily on EAS service in making regular daily calls. He noted that on a daily basis he places in excess of 10 calls to the San Angelo area in relation to his school and business activities.

Ms. Morey testified that she acted as chairperson of the Carlsbad community organizations formed for the purpose of addressing the EAS issue. Ms. Morey testified that the Carlsbad community interest in maintaining EAS service is extremely high given Carlsbad's almost total dependency on San Angelo for business, educational, professional and social needs. Ms. Morey reached this conclusion based on her actual experience, community meetings and a telephone survey of the Carlsbad residents. Ms. Morey noted that only a few businesses operate in Carlsbad and the only services provided are food, liquor and gasoline. She further noted that Carlsbad's only law enforcement is the Tom Green County Sheriff's Department based in San Angelo. According to Ms. Morey while Carlsbad has a volunteer fire department, at the time of the hearing the two fire trucks were not in service. Therefore, in the event of a fire, Carlsbad would have to rely on the Grape Creek Volunteer Fire Department. Grape Creek is located approximately six miles outside of San Angelo and is within the San Angelo Exchange. However, to receive this service the residents would have to call the San Angelo Fire Department which would then dispatch the Grape Creek Volunteer Fire Department. (Miles/Carlsbad Exhibit 12 at 48-53.) Summarizing the position of the Carlsbad residents Ms. Morey testified that:

> Carlsbad depends on San Angelo. In turn, San Angelo has a dependency on the revenue that the Carlsbad area brings in to them to their businesses. We use their businesses, their businesses then, in turn, take our money and turn it back in to San Angelo. If EAS is done away with, it's going to end up curtailing the business we are able to transact in San Angelo. We're going to have to curtail some of it because we won't be able to afford it.

If we have to make long distance phone calls for what we are now paying toll free, it's going to jump our telephone bills up so high that we are not going to be able to afford a lot of the luxuries that San Angelo makes available for us. In turn, that means less money spent in the area, which is not going to help anybody.

We don's feel that San Angelo subsidizes us. If anything, it's the other side of the coin, because when we spend our money in San Angelo, we pay a 1 percent city sale tax that we receive absolutely no benefit from, to my knowledge. All of our utilities come from San Angelo except for our water. We have gas, telephone, electric, butane. All of these we get from San Angelo.

All of our emergency services we get from San Angelo. If someone has a heart attack in Carlsbad area and has to make a long distance phone call for an ambulance, a long distance phone call takes longer to transact, and those few seconds could mean life or death for somebody.

We have the San Angelo State School in Carlsbad. Many of those employees live in San Angelo, and, therefore, those employees that have children have -- their children attend San Angelo Schools or day care centers. For them to contact their children to find out if their children are ill or make it home from school okay, it would be a long distance phone call.

Many homes are being built in the Carlsbad area at this time. Those contractors come from San Angelo. The building supplies come from San Angelo. Carlsbad is a fast growing area right now. There are two additions going in at this time. In building a home a lot of phone calls are made to contractors and building suppliers, and this could, in turn, in my opinion, slow down the building that is going on, the growth that is going on.

Those homes that are being built, those people have to work somewhere, and more than likely it is going to be in the San Angelo area, because Carlsbad does not have that many jobs available; therefore, those homes are supplying housing for the San Angelo labor force.

(Id., at 53-55.)

Mr. Coppinger is the superintendent of the Miles Independent School District, and testified regarding the educational affiliation between Miles ISD and San Angelo. Mr. Coppinger testified that his school district has a close working relationship with San Angelo State University. He noted that the Miles ISD trains between 8 and 12 of the university's student teachers each year, and Miles ISD relies on university professors for consultation purposes. He further noted that the university works with handicapped children from Miles through a Special Education Cooperative headquartered in San Angelo, of which the Miles ISD is a member. (Miles/Carlsbad Exhibit 13 at 18.)

Mr. Coppinger testified that the elimination of the EAS service would have the following detrimental effects:

1. The school budget would be affected substantially, allowing for all of the long distance calls to San Angelo for: medical services, repair services for school buses, and audiovisual machines.

2. Communications between the families of students and the school, and between students and their parents would be handicapped.

3. The social lives of the students would be tremendously affected as they look to San Angelo for most activities.

4. All emergency numbers for doctors provided by parents of the students are San Angelo numbers and these calls would incur long distance charges if EAS is removed.

5. Miles has no ambulance service and relies on San Angelo. If needed a call for ambulance service would incur a long distance charge absent EAS service.

(Id., at 19-21.)

In his post-hearing brief counsel for Miles/Carlsbad argued that the City of San Angelo's petition should be denied because the City of San Angelo failed its burden of proof in this case. Counsel argued that the record established herein demonstrates an overwhelming "community of interest" supporting the continuation of the existing EAS service between San Angelo and the communities of Miles, Carlsbad and Eola. Counsel further argued that alternatives to the existing EAS service should not be considered as the City of San Angelo's petition contained no request or prayer for alternative services. Therefore, the Commission should enter an order continuing the EAS service without modification or alteration.

5. Staff

Staff Witness Don Price presented testimony on behalf of the Commission staff in this proceeding. In addition to testifying regarding San Angelo's request, Mr. Price also presented in his prefiled testimony a detailed discussion of the background or history of EAS in Texas, and previous cases before the Commission involving requests for removal of EAS. Said discussion will not be repeated here, but is located on pages 2 through 23 of Mr. Price's prefiled testimony which was marked for identification purposes as Staff Exhibit 3.

Mr. Price testified that two questions must be answered in addressing the matter at issue herein: (1) Whether there is a significant community of interest between the affected exchanges; and (2) whether the rates which would be necessary to compensate the company for its costs are reasonable. Addressing first the former question, Mr. Price testified that the issue of community of interest has two dimensions, the first dimension being the economic and social links between the communities. According to Mr. Price the magnitude of the economic and social links may be measured by quantitative indicators such as per capita sales taxes collected in each of the communities, or by a qualitative analysis to assess the social and economic ties between the communities. Because of the lack of available information, Mr. Price did not utilize these methods in preparing his prefiled testimony, but he noted that the data provided in the prefiled testimonies of Intervenor Witnesses Powell, Crownover, Henderson, Ripple and Denis (previously discussed) provide examples of such analyses. (Staff Exhibit 3 at 24-25.)

The second dimension of community of interest addressed and relied upon by Mr. Price was the traffic patterns between the exchanges. Mr. Price testified that he performed an analysis of the traffic data between the San Angelo, Miles, Carlsbad and Eola exchanges based on EAS traffic studies, provided by GTSW, conducted between these exchanges during the period of April 30 to May 4, 1984. The results of Mr. Price's analysis are summarized on the attached schedules marked ALJ's Exhibit No. 2. According to Mr. Price the traffic studies indicate that traffic between San Angelo and each of the three surrounding EAS exchanges is roughly symmetrical.[4] Mr. Price also testified that he reviewed the results of the traffic study in the Eola exchange presented by CTTC Witness Hunt, and found it supportive of his conclusion that there is a relative balance of traffic between San Angelo and eola. (id., at 26-27.)

Mr. Price further testified that based on certain criteria set forth in the Commission's proposed Substantive Rule 23.49 (Telephone Extended Area Service)[5] regarding the assessment of community of interest where the establishment of EAS has been requested, the traffic data herein indicates that if Carlsbad, Miles and Eola were requesting EAS, the volumes of calls per subscriber line would be sufficient to justify going forward with the request. Specifically, he testified, the traffic studies indicate that the volume of calling surpasses the proposed rule's threshold showing of an average of 10 calls per line per month in those exchanges. Accordingly, Mr. Price testified that based on his analysis of the traffic data and the information provided by other witnesses in this case, he concluded that a significant community of interest exists among the communities of Miles, Carlsbad, Eola and the City of San Angelo. (Id., at 28-29.)

Regarding the various polls conducted in conjunction with this proceeding Mr. Price testified that there was overwhelming support for the continuance of EAS in the Carlsbad, Miles and Eola communities. He noted that the response rates among the three small exchanges varied from a low of 35 percent in Carlsbad to a high of 65 percent in Eola (Miles had a response rate of 56 percent). The preference for continuation of the EAS service indicated by the polls in the three small exchanges was 97 percent in Carlsbad and Miles, and 100 percent in Eola. Mr. Price further testified that the 18 percent response rate for San Angelo is "surprisingly good" for a return mail survey, and that among the respondents only 19 percent indicated a desire to retain EAS at the present rate. (Id., at 29-30.) According to Mr. Price the following conclusions can be drawn from the polls:

> First, it is obvious that the matter of EAS has pitted the large city against its small neighbors. The number of persons in San Angelo who need to call the surrounding communities is, on a percentage basis,

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[4]Mr. Price explained that by "roughly symmetrical" he means the traffic flowing from San Angelo to the Carlsbad, Miles and Eola exchanges is roughly equivalent to the volume of traffic flowing from those exchanges to San Angelo.

[5]P.U.C. SUBST. R. 23.49 was adopted on an emergency basis on May 17, 1985. This rule was adopted on a permanent basis on July 16, 1985.

> much less than the number of persons in the surrounding communities who need to call into San Angelo. It is therefore not surprising to see results such as were indicated by these polls.

(Id., at 30.)

Mr. Price also testified that a basic issue in this docket involves the pricing of EAS. He noted that if subscribers in San Angelo felt that the service was priced equitably, this case would not have been filed. Mr. Price explained that there is not a relative balance in the recovery of revenues for EAS under GTSW's present rate structure. He noted that based on a response to question 11 of the General Counsel's First Request for Information (RFI), the San Angelo subscribers account for more than 90 percent of the total EAS revenues collected in the San Angelo, Carlsbad and Miles exchanges. Mr. Price testified that given that "San Angelo accounts for only about 50 percent of the total EAS traffic, this does not seem to be particularly equitable." (Id., at 27 and 30.)

Mr. Price further testified that it would not be reasonable to eliminate the EAS charges to San Angelo and continue the service presently being provided by GTSW. He also testified that the testimonies of Intervenor Witnesses Powell, Crownover, Henderson, Ripple and Denis show that the existing EAS arrangement provides an economic and social benefit to all of the affected communities. Accordingly, Mr. Price testified, there exist in his opinion five options for resolution of this matter. Those are:

1. eliminate the existing service and allow all calls placed within the present EAS area to become intraLATA toll;
2. eliminate the existing service and institute some form of discounted toll plan such as the ECC;
3. eliminate the existing service and institute one-way EAS into San Angelo;
4. maintain the existing service but modify the rate structure; or
5. maintain the existing service at the present rates.

Regarding Option No. 1, Mr. Price testified:

> [T]he first option would have the result of replacing the existing EAS service with toll message charges. That is probably the harshest option, especially in light of San Angelo's position that they do not wish for the service to be discontinued. Therefore, I do not consider the elimination of EAS and its replacement by intraLATA toll charges to be an option that would truly benefit any of the parties to this case.

(Id., at 31.)

Mr. Price testified that Option No. 2 is slightly less harsh than Option No. 1 in that it would allow persons wishing to subscribe to the toll discount plan the opportunity to place calls at a slightly lower rate than the intraLATA

toll charges. He noted however that:

> [I]n light of the city's position that the EAS service does not need to be eliminated, I do not consider this option to be one which would be in the interest of all of the parties.

(Id., at 32.)

Regarding Option No. 3, one-way EAS to San Angelo, Mr. Price testified that:

> [T]his option has certain intuitive appeal in that it would require the cost burden to fall almost entirely on the subscribers in the smaller communities who, on a per capita basis, use the EAS service far heavier than do subscribers in San Angelo. The fundamental drawback to this option is the fact that traffic between the exchanges in the EAS arrangement is roughly symmetrical. To reiterate, I do not believe that it would be equitable to put virtually all of the costs of EAS onto the subscribers in those smaller communities when those communities generate relatively the same amount of traffic into San Angelo as San Angelo does into the smaller communities. While some might argue that the present rate structure assigns the revenue recovery in an inequitable manner, it must be remembered that the present service arrangement allows two-way calling. Therefore, based on the premise of roughly equal traffic flow between the exchanges, I would reject this option.

(Id., at 32.)

Mr. Price testified that Option No. 4, maintaining the existing EAS service but adjusting the EAS rate structure in this case, is problematic for the following reasons:

> First, General Telephone already has a rate schedule which was approved by this Commission within a major rate case in which the Company's overall costs and rates were considered. Secondly, the sheer number of subscribers in San Angelo (38,210 access lines) when compared to the number of subscribers in Carlsbad and Miles (1,014 access lines total) would prevent any reasonable attempt to balance GTSW's present revenue recovery. To accomplish a balancing of revenue recovery would mean that the subscribers in San Angelo would pay less than one dollar per month while the subscribers in Carlsbad and Miles would pay upwards of thirty dollars each month for EAS. Thirdly, I do not feel that the EAS rates charged to GTSW's customers in San Angelo, Carlsbad, and Miles can be adjusted in a vacuum; that is, without examination of the Company's other EAS rates. If this Commission were to set aside the EAS rates for one city out of the Company's existing rate schedule, it could find itself knee-deep in similar requests from other General Telephone exchanges.

(Id., at 33.)

Finally, regarding Option No. 5, maintaining the existing EAS service, Mr. Price testified that:

> For all of the reasons I have given above for rejecting the first four options, I would recommend that the existing service be maintained. It is my opinion that there has been a substantial community of interest demonstrated by the surrounding exchanges. Further, if those surrounding exchange were coming before the Commission for the establishment of EAS, my review of the traffic data

indicates that they would be able to pass the first hurdle toward consideration of the establishment of EAS. Thus, if the present EAS service were to be discontinued a scenario could develop in which those three communities would be able to come right back and ask that they be considered for establishment of EAS.

This is not to say that I do not believe the needs of the subscribers in San Angelo should be ignored. Indeed, the City of San Angelo has raised some very important points regarding the EAS revenue recovery under General Telephone's existing rate schedule.[6] Therefore, I would strongly recommend that the EAS rate structure and rate levels be carefully scrutinized in the Company's next major rate case.

(Id., at 33-34.)

The general counsel reiterated the staff's position as follows in her post-hearing brief:

Considering that there is a high degree of uncertainty over precisely what the City Council was asking for as well as uncertainty over what San Angelo customers were voting for on the survey, the existing service should not be altered. Staff strongly contends that an existing service should not be tampered with when the evidence regarding the degree of interest within the community requesting the action seems to be so dubious and irregular. There is no readily quantifiable degree of interest in eliminating the service. It is doubtful whether the question of eliminating the service as opposed to eliminating the charge was ever dealt with in a direct and explicit manner. Even assuming the survey had been reliable, less than 15% of the San Angelo subscribers responded in favor of eliminating the charge. Since such a high degree of uncertainty exists, staff would reurge their recommendation of leaving the service intact and considering extended area service charges in the realm of General's next rate case.

(Brief of the General Counsel at 4.)

The general counsel also argued in brief that the issue of measured service is outside the scope of this proceeding and reurged her motion to strike the testimony of GTSW Witness Chappell dealing with the subject. The general counsel argued that:

No notice was given to customers regarding the possibility of the implementation of LMS. No mention was made of the LMS option until testimony was prefiled and no party had any opportunity to conduct discovery on costs associated with implementing a measured service alternative. On cross-examination Mr. Chappell admitted that for a measured service option to be implemented, outboard equipment would be required at the Carlsbad switching office which would cost approximately $80,000. He went on to state that this cost would be paid for by the general body of ratepayers. Such an addition is clearly a change in rates and should be considered within the scope of a 43a rate proceeding where customers receive proper notice. The scope of the current docket is limited to EAS type alternatives. EAS is actually similar to a toll additive in that if EAS were eliminated, the calls between the exchanges would automatically revert to toll, and there would be no other rate effects on local calling. Measured service on the other hand is a restructuring of local rates. With the exception of the EAS additive, local rates are not in question in this

[6]Mr. Price explained at the hearing that based on his observations, there may in fact exist a disproportionate recovery of EAS revenues, and that this matter warrants further investigation.

> docket. Implementing local measured service simply would not address the EAS problem and, in fact, would serve to complicate the situation. Similar measured service proposals have been presented by General in five previous EAS elimination dockets (5250, 5258, 5580, 5501, 5528) and have never been accepted by this Commission within the parameters of those elimination requests.

(Id., at 8.)

C. Review and Recommendation

1. Scope of This Proceeding

[1] The scope of this proceeding became an issue herein because: (1) the City of San Angelo's petition only involved the removal of the EAS charge, therefore, the intervenors argue, that is the only issue properly before the Commission, and not issues of either the elimination of the service, or possible alternatives thereto; and (2) GTSW proposed optional local measured service (LMS) as an alternative to the existing EAS service, and such--the general counsel argues--is beyond the scope of a proceeding involving the elimination of EAS service.

Addressing first the matter of San Angelo's request, the ALJ notes that while it is true that the city's petition only requested removal of the EAS charge, and while the precise relief sought herein by the city was uncertain until the hearing, the ALJ disagrees with the contentions that the issues of removal of the EAS service or alternatives to said service may not properly be considered by the Commission in this proceeding, for the following reasons. First, and perhaps most importantly, the ALJ finds that no undue prejudice or harm will result from the Commission's consideration of the above issues because of a lack of notice. To the contrary, the ALJ notes that while the City of San Angelo petition only addressed the removal of the charge, it is clear from the protest statements and intervenor testimony filed herein that persons aware of, and affected by, this filing actually believed it concerned the proposed elimination of EAS, and not merely the removal of the charge. Accordingly, little weight should be afforded arguments that the public will be detrimentally affected because it lacked knowledge that the Commission would be considering the elimination of EAS between San Angelo and the three surrounding communities at issue herein.

Second, in light of the above, it would be a complete waste of time for the Commission to limit its consideration herein only to the removal of the EAS charge from the bills of the San Angelo residents, as nothing more would be accomplished by requiring the city to refile its petition pleading alternative relief. Further, if the Commission were to so limit its review, the following items would be deemed irrelevant to the disposition of this case, as such (with rare exception) do not address the removal of charge, but rather the removal of the service: the written protest statements and petitions, the customer comments at the regional hearing, most if not all of the prefiled testimony of

all of the parties, and the verbal testimony and demonstrative evidence submitted at the hearing.

Third, and finally, the ALJ believes it is reasonable to consider the appropriateness of eliminating the EAS service in conjunction with consideration of the removal of the charge as the two, in the ALJ's opinion, go hand in hand. Likewise, the ALJ finds that where removal of an existing service is being proposed, and said removal is contested, consideration of possible alternatives to the service being terminated is appropriate.

For these reasons the ALJ recommends that the Commission not limit its determination herein to whether or not the EAS charge should be removed.

[2] Regarding the LMS issue, the ALJ concurs with the general counsel that such is beyond the scope of this proceeding. First, the ALJ finds that the proposed implementation of LMS represents a rate change, and as such specific notice requirements must be met pursuant to Section 43(d) of the P.U.R.A. and P.U.C. PROC. R. 21.22. Specifically, the utility must publish notice of the proposed change once a week for four consecutive weeks in a newspaper of general circulation, and provide individual notice to its customers. However, not only was notice of the consideration of LMS not given in the manner set forth by the above referenced statute and Commission rule, no notice at all was given that LMS would be an issue in this docket.

Second, the ALJ does not believe LMS is really an alternative to EAS. Notwithstanding GTSW's argument that because the EAS additive is listed in its local tariff it is a part of the customers' local service, EAS is, in the ALJ's opinion, a toll type additive. As noted by the general counsel if EAS is eliminated all calls between the affected exchanges would revert to message toll charges. LMS on the other hand represents a restructuring of local rates. The ALJ does not believe that a proposal to eliminate EAS gives sufficient notice to the public that local rates, even on an optional basis, may be entirely restructured as a result of said proposal. In that regard the ALJ also believes that proposals to implement LMS on either an optional or non-optional basis should be specifically requested in an application for a tariff change as opposed to being addressed in cases involving the elimination of EAS.

For these reasons the ALJ recommends that the Commission find that LMS proposals--optional or non-optional--are beyond the scope of proceedings involving requests to eliminate EAS.

[3] 2. Elimination of Only the EAS Charge

As has already been discussed, the City of San Angelo in filing this petition primarily seeks the removal of the EAS charge from its residents' bills, leaving in place the existing EAS service. The ALJ finds that this request is not in the public interest and should not be granted for the

following reasons. Although the precise amount cannot be determined from the evidence in the record, there is a cost associated with maintaining the availability of EAS service from San Angelo to the surrounding communities at issue herein. Therefore, the removal of the EAS charge without eliminating the service would mean that either: (1) GTSW would not recover the cost of the service through rates; or (2) based on evidence in the record the cost could be recovered from the residents of Miles, Carlsbad and Eola through a $30 to $40 EAS additive; or (3) the cost could be borne by the general body of ratepayers. None of these options does the ALJ find to be fair, reasonable or acceptable. The first option would essentially require the company to provide the service free of charge. The second option would, in the ALJ's opinion, impose an excessive burden upon the residents of Miles, Carlsbad and Eola. The third option would require the general body of ratepayers to pay a portion of the cost for the service accessible only to the City of San Angelo and the communities of Miles, Carlsbad and Eola. Accordingly, the ALJ recommends that the City of San Angelo's request for elimination of the EAS charge without removal of the service be denied.

The ALJ would note however that given the fact that the City of San Angelo contributes more than 90 percent of the EAS revenues when the city only accounts for approximately 50 percent of the total EAS traffic, GTSW's EAS rate structure and revenues should be closely scrutinized in the company's next general rate case.

[4] 3. Elimination of EAS

The ALJ believes the real question in this docket is whether or not the Commission should order the elimination of EAS between San Angelo and the communities of Miles, Carlsbad and Eola. Based on the evidence presented in this case the ALJ does not find, and cannot at this time recommend, that the elimination of EAS is in the overall public interest.

It is noted that the reliability of the subscriber survey which essentially formulated the basis for the petition filed herein is, in the ALJ's opinion, questionable. As previously discussed, given the wording on the survey, it is not clear that respondents voting against EAS were indicating a desire for the complete removal of the service or indicating a desire for the alteration of EAS charges (i.e., choosing between various levels of rates). This fact was conceded by City Witnesses Tucker and Thompson, who testified that in their opinions the wording on the survey cards was confusing.

Further, even if it is assumed that all of the respondents voting against EAS were expressing the desire for the elimination of the service, the ALJ cannot conclude that this is the position of the majority of San Angelo residents. Both Councilmembers Thompson and Tucker testified that they voted against EAS on their belief that the majority of the San Angelo residents wanted it removed. Councilman Thompson also testified that he suspected that a

minority of San Angelo residents use EAS. However, based on the evidence in the record, only approximately 18 percent or 7,571 of the 41,978 customers in San Angelo responded to the survey; of which 1,414 subscribers favored retaining EAS. Accordingly, approximately 14.67 percent or 6,157 of the San Angelo customers voted against EAS. However, through cross-examination of City Witness Thompson it was pointed out that these survey results might be diluted by the fact that the survey was taken of the San Angelo exchange which extends beyond the city limits of San Angelo. In counting the votes no distinction was made between votes from customers within as opposed to outside of San Angelo's city limits. Therefore, the possibility exists that less than 14.67 percent of the residents within the City of San Angelo desire the elimination of EAS.

An additional concern regarding the reliability of the survey included the fact that the response may have been less than it otherwise would have been because the survey was included as a stuffer in the customers' bills and may have been overlooked, and because postage paid survey cards were not used to return the cards. It is noted that a significant amount of cross-examination focussed on the matter of who--GTSW or the City of San Angelo--made the ultimate decisions regarding the wording on the survey, the method of distribution, and whether or not to pay the postage for return of the survey cards. GTSW contends that the San Angelo City Council actually approved the wording on the survey cards and decided not to pay postage for returning the cards. The City of San Angelo contends that GTSW made these decisions, noting that the wording on the sample cards GTSW presented the City Council differed from that on the survey cards actually mailed. Regardless of who made the decisions regarding the content of, and manner of conducting, the survey, its reliability remains questionable.

Given these uncertainties the ALJ cannot conclude that the survey results alone justify the elimination of EAS between San Angelo and the surrounding communities of Miles, Carlsbad and Eola.

[5] Another factor to consider in determining whether or not the existing EAS arrangement should be maintained involves the question of the community of interest among San Angelo and the three surrounding communities. As pointed out by CTTC at page 9 of its post-hearing brief, the Commission has through prior cases established the following guidelines in determining whether or not a community of interest exists warranting the implementation of EAS between communities. Although the case at hand involves the proposed elimination of EAS as opposed to its establishment, the ALJ believes the guidelines for determining the existence of a community of interest are the same or at least similar in both instances. These guidelines are:

> A community of interest between two towns exists when there is a wide-spread commonality between the two towns in identification, business interests, community service--such as hospitals, schools, fire protection, etc.--and/or a commonality generated by

customers who work in one town and reside in the other. uch a community of interest results in a need for telecommunications on a frequent basis between the two towns by a large portion of the customers. Petition of The Woodlands Development Corp. and Eckard Drugs of Texas, Inc., for amendments of the certificates of convenience and necessity of Conroe Telephone Company and Southwestern Bell Telephone Company, for extended area service between Conroe Telephone Companies' Riverbook Exchange and portions of Southwestern Bell Telephone Companies' Houston Metropolitan Calling Area, and other relief, Docket No. 2782 and 4061, 10 P.U.C. BULL. 1 (September, 1984) (hereinafter referred to as The Woodlands) Examiner's Conclusion of Law No. 30, adopted by order of the Commission.

The evidence is uncontroverted that a community of interest exists from the three outlying communities into San Angelo; however, the community of interest from San Angelo to the three surrounding communities was the subject of much debate.

San Angelo contends that there is little, if any, community of interest from the municipality to the three outlying communities and that most of its citizens neither want or use EAS.

The ALJ notes that the evidence in the record does not establish that the majority of the San Angelo residents neither want or utilize EAS, or that no significant community of interest exists from San Angelo to the three outlying communities. While it is true that the calling patterns between the municipality and the outlying communities is not equal, this is not unusual and in fact is to be expected where large and small communities are involved. An unequal number of calls between a larger and smaller community does not in and of itself establish a lack of community of interest. In instances such as this it is often necessary to look beyond a straight comparison of the number of calls to and from one area to the other to determine the existence (or lack thereof) of a community of interest. Staff Witness Price and CTTC Witness Hunt did this by analyzing the calling patterns between the exchanges at issue in this case. The traffic studies (previously discussed) sponsored by both witnesses indicate that the calling patterns from San Angelo to the outlying communities and from those communities to San Angelo is roughly symmetrical. Accordingly, the results of the traffic studies indicate that the San Angelo residents appear to have some significant interest in calling the surrounding communities. This was confirmed by Councilwoman Tucker who on cross-examination admitted that at least a small community of interest exists from San Angelo to the outlying areas.

Additionally, as previously discussed, the testimony of many intervenor witnesses set forth some social and economical benefits to all of the communities from the existence of EAS. Further, the evidence reflects through the direct testimony of Intervenor Witnesses Crownover, Ripple, Hunt, Williams,

Smith, Granzin, Friend, Morey and Coppinger, and the cross-examination of City Witnesses Tucker and Thompson, that San Angelo does in fact have some interest in the surrounding communities, though admittedly not as great an interest as those communities have in San Angelo. The ALJ finds that while San Angelo may not be totally dependent upon the communities of Miles, Carlsbad and Eola, there does appear to exist some community of interest.

The ALJ notes that the EAS arrangement between the areas at issue herein has existed for quite some time, and like basic telephone service, subscribers have come to rely on the service. Therefore, before the Commission orders the elimination of such a service, it should be convinced that such is in the overall public interest.

The ALJ finds that given the uncertainties regarding the survey and survey results and the fact that a community of interest does exist between San Angelo, Miles, Carlsbad and Eola, the record established herein is insufficient to support the finding that the elimination of EAS is in the public interest. Accordingly, the ALJ recommends that the City of San Angelo's petition be denied and that the existing EAS arrangement be maintained without modification.

4. Alternatives to the Existing EAS Arrangement

As previously noted, Staff Witness Price and GTSW Witness Chappell set forth and briefly discussed in their respective testimonies certain possible alternatives to the existing EAS arrangement. Because GTSW has taken a neutral position in this docket Mr. Chappell made no recommendation regarding which, if any, of the alternatives set forth in his testimony would be most appropriate in this case. Mr. Price, for reasons already discussed, rejected each of the alternatives set forth in his testimony and recommended that the current EAS arrangement be maintained.

Given the ALJ's finding in Section II(C)(3) of this report--that the existing EAS arrangement should be maintained without modification--a determination as to which alternative is most appropriate is unnecessary at this time.

III. Findings of Fact and Conclusions of Law

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

A. Findings of Fact

1. On August 27, 1984, the City of San Angelo filed a petition for the removal of the EAS charge from General Telephone of the Southwest's (GTSW) rates in San Angelo, Texas.

2. At the hearing on the merits the City of San Angelo clarified its request as follows. By this application the City of San Angelo seeks the removal of the

EAS charge from the monthly rates paid by the residents of the municipality, maintaining if possible the existing service. In the alternative, the City of San Angelo seeks the removal of the service and the charge.

3. The communities affected by this application in addition to the City of San Angelo are the communities of Miles, Carlsbad and Eola.

4. Intervenor status was granted to GTSW, Central Texas Telephone Cooperative (CTTC) and the communities of Miles and Carlsbad.

5. A regional hearing or public comment meeting was conducted on February 18, 1985, at the San Angelo Convention Center from 3:00 p.m. to 6:00 p.m.

6. Approximately 350 people appeared at the regional hearing. Forty individuals presented oral comments on San Angelo's proposal; 11 spoke against EAS and 29 spoke in favor of retaining the service.

7. Petitions containing a total of 5,795 signatures were submitted at the regional hearing in support of retaining EAS. The petitions were submitted by individuals, businesses in the Eola, Miles, Carlsbad and San Angelo areas, law enforcement agencies, school districts, volunteer fire departments, trade and professional associations, and Commissioners Courts. Additionally, 20 individual written statements in favor of EAS were presented.

8. Additional petitions and a multitude of statements in favor of retaining EAS were received by the Commission. The Commission also received a petition containing 80 signatures of persons supporting the City of San Angelo's request for removal of the EAS charge from GTSW's rates in San Angelo.

9. The hearing on the merits was conducted on February 27, 1985.

10. The City of San Angelo conducted a customer survey to determine the positions of GTSW's customers in the San Angelo, Miles and Carlsbad exchanges regarding EAS. CTTC, which serves the Eola exchange, conducted a similar survey. The results of both surveys are set forth below:

	Number of Customers	For EAS	Against EAS
San Angelo	41,978	1,414	6,157
Carlsbad	435	149	4
Miles	635	345	10
*Eola	220	143	0

*Note: This phone system is owned by the Central Texas Telephone Cooperative, and CTTC conducted their own survey.

11. Based on the survey results set forth in Finding of Fact No. 10, the City of San Angelo petitioned the Commission for the relief described in Findings of Fact Nos. 1 and 2.

12. The City of San Angelo's position, set forth in Section II(B)(1) of this report, is that the charge or the service and the charge should be eliminated as the residents of San Angelo neither want or use EAS. It is also the City of San Angelo's position that under the existing EAS arrangement it is unfairly subsidizing the outlying communities of Miles, Carlsbad and Eola, as the telephone subscribers in the San Angelo exchange bear over 92 percent of the cost of EAS.

13. GTSW took a "neutral" position regarding this matter as set forth in Section II(B)(2) of this report.

14. The positions of CTTC and the communities of Miles and Carlsbad are set forth in Sections II(B)(3) and (4) respectively of this report. The position of these intervenors is that EAS should not be eliminated because a community of interest exists among San Angelo, Miles, Carlsbad and Eola; and because the outlying communities are dependent upon San Angelo for professional services, jobs, shopping, social and recreational activities and educational interests.

15. The staff's position is set forth in Section II (B)(5) of this report. For reasons stated therein the staff position is that the existing EAS arrangement should be maintained without modification.

16. EAS between San Angelo, Carlsbad and Miles was established in 1969. EAS was established between San Angelo and Eola in 1971.

17. Prior to July 1982, the EAS charges were not identified as a separate item on customers' bills.

18. EAS charges are currently identified as a separate item on the customers' bills. The current monthly additives for one-party telephone subscribers is as follows: San Angelo -- $1.35, Miles -- $4.95 and Carlsbad -- $4.95. EAS to Eola is provided pursuant to a contractual arrangement between GTSW and CTTC. The monthly EAS rates paid by CTTC customers are $.50 for residential customers, and $.75 for business customers.

19. Because there is a cost associated with maintaining the availability of EAS from San Angelo to the surrounding communities, the removal of the EAS charge without eliminating the service would mean that: (1) GTSW would not recover the cost of providing this service through rates; or (2) the cost would be recovered from the residents of Miles, Carlsbad and Eola through additives of approximately $30 to $40; or (3) the cost for this service would be borne by the general body of ratepayers. For reasons set forth in Section II(c)(2) of the report, none of these alternatives is acceptable.

20. The evidence does not show that the majority of the San Angelo residents neither want or utilize EAS.

21. An unequal number of calls between a large and smaller community does not in and of itself establish a lack of community of interest.

22. The traffic studies presented herein show the calling patterns from San Angelo to the outlying communities, and from these communities to San Angelo to be roughly symmetrical.

23. The weight of the evidence in this proceeding shows a community of interest exists between San Angelo and the communities of Miles, Carlsbad and Eola.

24. The record reflects that the wording on the survey cards was confusing.

25. The record is not clear whether the respondents voting against EAS were indicating a desire for the complete removal of the service or were expressing a desire for the alteration of EAS charges.

26. The evidence shows that because the survey was included as a stuffer in the customers' bills, it may have been overlooked, and because postage paid survey cards were not used, the response to the survey was less than it might otherwise have been.

27. The reliability of the survey forming the basis for the City of San Angelo's petition herein is questionable for reasons discussed in the Examiner's Report and set forth above in Findings of Fact Nos. 24, 25, and 26.

28. Approximately 18 percent or 7,571 of the 41,978 customers in San Angelo responded to the survey; of which 1,414 subscribers favored retaining EAS. Accordingly, approximately 14.67 percent or 6,157 of the responding San Angelo subscribers voted against EAS.

29. The evidence shows that a sufficient quantity and duration of telephone calls exists between the San Angelo, Miles, Carlsbad and Eola exchanges to justify consideration of implementation of EAS in this area in the absence of the current EAS arrangement.

30. For the reason set forth in Finding of Fact No. 29, if EAS is eliminated in this docket, then the residents of Miles, Carlsbad and Eola could petition the Commission for the re-implementation of the service.

31. Given the fact that the City of San Angelo contributes more than 90 percent of the EAS revenues when the city only accounts for approximately 50 percent of the total EAS traffic, GTSW's EAS rate structure and revenues should be closely scrutinized in the company's next general rate case.

B. Conclusions of Law

1. The Commission has jurisdiction over this docket pursuant to Sections 16 and 18 of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1984).

2. No notice was given the public that local measured service (LMS) would be considered in this docket; therefore, the LMS proposal fails to comply with Section 43(a) of the PURA and should not be considered in this docket.

3. The issue of local measured service is beyond the scope of a proceeding involving the proposed elimination of EAS. Proposals to implement LMS on either an optional or non-optional basis should be specifically requested in applications for tariff changes.

4. Given the uncertainties discussed in the Examiner's Report and set forth in Findings of Fact Nos. 24, 25 and 26 regarding the survey conducted by the City of San Angelo, said survey is not a reliable basis for eliminating EAS in this docket.

5. The City of San Angelo's request for the removal of the EAS charge only, but not the service, should be denied for reasons set forth in Section II(C)(2) of the Examiner's Report and Finding of Fact No. 19.

6. The City of San Angelo's alternative request to eliminate the EAS charge and service should also be denied for reasons set forth in Section II(C)(3) of the Examiner's Report and Findings of Fact Nos. 20 through 26, 29 and 30.

Respectfully submitted,

Shelia A. Bailey
SHELIA A. BAILEY
ADMINISTRATIVE LAW JUDGE

APPROVED on this 14th day of August 1985.

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

mf

We have been requested by the San Angelo City Council to determine the interest in continuing Extended Area Service (EAS) between San Angelo and the exchanges of Miles, Carlsbad and Eola.

EAS provides toll free calling between exchanges for a flat monthly fee. If EAS is discontinued, calls may be placed between these exchanges at regular intrastate long distance rates. A 3-minute call between Carlsbad and San Angelo is 26 cents at regular toll rates. This same 3-minute call between Miles and San Angelo or Eola and San Angelo is 37 cents.

At the present time, monthly rates for EAS are $1.35 per month for residential one-party service and $3.55 per month for business one-party service.

Do you want EAS at these rates? Yes☐ No☐

We also have a proposal pending before the Public Utility Commission of Texas which would provide EAS at $0.75 per month for residential one-party service and $1.95 per month for business one-party service. 5F98

Do you want EAS at these rates? Yes☐ No☐ GTSW 1

Your San Angelo telephone number_____

Please complete this survey card and return within 7 days. Thank you. 2/27/85 SAG

Important note: Rates shown are for determination of customer preference. Final rates and service provided must be approved by the Public Utility Commission of Texas.

General Telephone GTE

JA126/84

We have been requested by the San Angelo City Council to determine the interest in continuing Extended Area Service (EAS) between Miles and San Angelo.

EAS provides toll free calling between exchanges for a flat monthly fee. If EAS is discontinued, calls may be placed between these exchanges at regular intrastate long distance rates. A 3-minute call between Miles and San Angelo is 37 cents at regular toll rates.

At the present time, monthly rates for EAS are $4.95 per month for residential one-party service and $13.00 per month for business one-party service.

Do you want EAS at these rates? Yes☐ No☐

We also have a proposal pending before the Public Utility Commission of Texas which would provide EAS at $3.65 per month for residential one-party service and $9.65 per month for business one-party service. 5F98

Do you want EAS at these rates? Yes☐ No☐ GTSW 1(a)

Your Miles telephone number_____

Please complete this survey card and return within 7 days. Thank you. 2/27/85 SAB

Important note: Rates shown are for determination of customer preference. Final rates and service provided must be approved by the Public Utility Commission of Texas.

General Telephone GTE

JA127/84

We have been requested by the San Angelo City Council to determine the interest in continuing Extended Area Service (EAS) between Carlsbad and San Angelo.

EAS provides toll free calling between exchanges for a flat monthly fee. If EAS is discontinued, calls may be placed between these exchanges at regular intrastate long distance rates. A 3-minute call between Carlsbad and San Angelo is 26 cents at regular toll rates.

At the present time, monthly rates for EAS are $4.95 per month for residential one-party service and $13.00 per month for business one-party service.

Do you want EAS at these rates? Yes☐ No☐

We also have a proposal pending before the Public Utility Commission of Texas which would provide EAS at $3.65 per month for residential one-party service and $9.65 per month for business one-party service.

Do you want EAS at these rates? Yes☐ No☐ 5F98 GTSW

Your Carlsbad telephone number_____ 2/27/85 1(b) SAB

Please complete this survey card and return within 7 days. Thank you.

Important note: Rates shown are for determination of customer preference. Final rates and service provided must be approved by the Public Utility Commission of Texas.

ALJ's EXHIBIT NO. 1

General Telephone GTE

JA128/84

PUBLIC UTILITY COMMISSION OF TEXAS

Petition of San Angelo

Traffic Between San Angelo and Eola

One-way "average business day" traffic

	Minutes of Use	Calls
San Angelo to Eola	2,420	694
Eola to San Angelo	2,094	784

One-way "five day" traffic

	Minutes of Use	Calls	Calls per Line
San Angelo to Eola	12,103	3,469	0.77
Eola to San Angelo	10,476	3,345	14.48

ALJ's EXHIBIT NO. 2

PUBLIC UTILITY COMMISSION OF TEXAS

Petition of San Angelo

Traffic Between San Angelo and Carlsbad

One-way "average business day" traffic

	Minutes of Use	Calls
San Angelo to Carlsbad	4,988	2,379
Carlsbad to San Angelo	5,788	2,297

One-way "five day" traffic

	Minutes of Use	Calls	Calls per line
San Angelo to Carlsbad	24,948	10,642	0.24
Carlsbad to San Angelo	28,894	11,487	26.40

PUBLIC UTILITY COMMISSION OF TEXAS

Petition of San Angelo

Traffic Between San Angelo and Miles

One-way "average business day" traffic

	Minutes of Use	Calls
San Angelo to Miles	4,995	1,969
Miles to San Angelo	5,807	1,757

One-way "five day" traffic

	Minutes of Use	Calls	Calls per Line
San Angelo to Miles	24,979	8,789	0.20
Miles to San Angelo	29,036	8,785	13.83

DOCKET NO. 5898

PETITION OF THE CITY OF SAN ANGELO FOR REMOVAL OF THE EXTENDED AREA SERVICE CHARGE FROM GENERAL TELEPHONE COMPANY OF THE SOUTHWEST'S RATES IN SAN ANGELO, TEXAS	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds the above styled and number application was processed in accordance with applicable statutes by the administrative law judge who prepared and filed a report containing Findings of Fact and Conclusions of Law, which Examiner's Report, Findings of Fact, and Conclusions of Law are adopted and make a part of this Order. The Commission further issues the following Order:

1. The Petition of the City of San Angelo for the removal of the extended area service charge from General Telephone Company of the Southwest's (GTSW) rates in San Angelo, Texas is in all respects hereby DENIED.

2. The existing extended area service (EAS) arrangement between the City of San Angelo and the communities of Miles, Carlsbad and Eola shall be continued without modification at this time.

3. GTSW's EAS rate structure and revenues should be closely scrutinized in the company's next general rate case.

SIGNED AT AUSTIN, TEXAS on this the 23rd day of September 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PHILIP F. RICKETTS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

mf

INQUIRY INTO THE MEET-POINT BILLING PRACTICES OF GTE SOUTHWEST, INC.	§ § §	DOCKET NO. 8730

December 11, 1989

In docket arising from final order in Docket No. 5610, Commission approved procedure for GTE to refund overcharges related to switched transport to IXCs. The Commission issued another final order in this docket, related to the rate structure for switched transport, on November 1, 1989, which is published, along with the entire Examiner's Report in this docket, at 15 P.U.C. BULL. 747.

[1] RATEMAKING--RATE DESIGN--REFUNDS, CREDITS, AND SURCHARGES

Commission approved on a 2-1 vote, a stipulated refund procedure requiring GTE to refund overcharges to IXCs for switched transport service provided from January 1, 1984 through February 22, 1989. (p. 1348) See 15 P.U.C. BULL. 754 et seq.

DOCKET NO. 8730

INQUIRY INTO THE MEET-POINT BILLING PRACTICES OF GTE SOUTHWEST, INCORPORATED	§ § §	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. By final order signed on November 1, 1989, that portion of the Examiner's Report pertaining to the appropriate rate structure for GTE Southwest's switched transport rate was approved. The remainder of the Examiner's Report (Section
[1] IV) and Findings of Fact Nos. 10 through 19 are hereby adopted and made a part of this Order, with the following modifications:

Conclusion of Law No. 5, as originally proposed, is renumbered and modified to read as follows:

6. Acceptance of the parties' stipulation regarding the refund procedure is in the public interest. PURA Section 16(a) and Tex. Rev. Civ. Stat. Ann. art. 6252-13a Sec. 13(e).

The Commission further issues the following order:

1. Within 10 days of the date of this Order, GTE Southwest shall designate individuals to administer and coordinate the refund process, as well as to interface with General Counsel, if necessary, on matters relating to the refund.

2. Within 20 days of the date of this order, GTE Southwest shall prepare a comprehensive list of interexchange carriers that may be eligible for a refund.

3. Within 20 days of the date of this order, GTE Southwest shall prepare a Refund Plan, which shall include a dated schedule of events reflecting, at a minimum, the period during which GTE Southwest shall calculate and negotiate with customers.

4. Within 30 days of the date of this order, GTE Southwest shall provide notice as follows:

   a. Individual notice (in the form attached to the Refund Stipulation) by certified mail to all past and current interexchange carrier customers of GTE Southwest;

   b. Individual notice (in the form attached to the Refund Stipulation) by U.S. Mail, first class, to all interexchange carriers listed on the Service List of Docket No. 7790 not provided notice in Subsection (a) above;

   c. General notice to be provided by GTE Southwest to the General Counsel who will ensure its publication in the Texas Register.

5. Within 180 days of the date of this Order, GTE Southwest shall negotiate with and calculate individual refunds for each eligible interexchange carrier customer, as well as schedule the actual payment of refunds.

6. Where settlement is reached between GTE Southwest and nonintervening interexchange carrier customers, the recipient shall receive all refund payments no later than one year following the date of this Order.

7. Within 20 days of the date of this Order, GTE Southwest shall file with the Commission a list of interexchange carriers that may be eligible for a refund and the Refund Plan, including one copy to be delivered to General Counsel.

8. Within seven days after the completion of the prescribed notice requirement, GTE Southwest shall file with the Commission an affidavit of notice, including one copy to be delivered to General Counsel.

9. On or before the 225th day following the date of this Order, GTE Southwest 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). The following portion of the report shall be filed under a protective agreement to be entered into between General Counsel and GTE Southwest and shall be a sealed document not subject to public disclosure pursuant to Tex. Rev. Civ. Stat. Ann. art. 6252-17a, §3(a): the individual amounts refunded or to be refunded, and the account number (phone number).

10. In the event an eligible customer cannot or does not receive a refund due to dissolution or some other reason, GTE Southwest shall provide a full explanation of circumstances in the status report described above. General Counsel may request clarification of any explanation provided by GTE Southwest.

11. The refunded monies returned as a result of the refund procedure approved herein, and the individual agreements 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.

12. Acceptance of the stipulation regarding the refund procedure shall not in any way affect the rights of eligible nonintervening exchange carrier customers to receive any refund.

13. Acceptance of the stipulation regarding the refund procedure in this case does not indicate the Commission's endorsement or approval of any principal or methodology which may underlie the stipulation.

14. 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 11th day of December 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

MARTA GREYTOK, COMMISSIONER

PAUL D. MEEK, CHAIRMAN

I respectfully dissent. Absent evidence of what rates were improperly charged and what rates should have been charged, the majority's decision constitutes an abrogation of their statutory duty to set just and reasonable rates.

JO CAMPBELL, COMMISSIONER

ATTEST:

MARY ROSS McDONALD
SECRETARY OF THE COMMISSION

nsh

APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO OFFER AN EXPERIMENTAL OPTIONAL CALLING PLAN (DISCOUNTED INTRALATA RATES)	§ § § §	DOCKET NO. 8790

December 13, 1989

Commission adopted stipulation regarding trial offering of discounted intraLATA toll packages and established procedures to be followed in dockets resolved by stipulation of all parties and all issues, pending adoption of a procedural rule governing full stipulations.

[1] PROCEDURE--STIPULATIONS AND SETTLEMENTS

Commission overruled holding in Docket No. 5109, Application of Pedernales Electric Cooperative, Inc. to Increase Rates, 10 P.U.C. BULL. 1258 (September 29, 1983) that parties may not create a right to a new hearing if the Commission modified their stipulation. This change in policy is intended to indicate that the Commission favors and wants to encourage stipulations that are in the public interest. (p. 1394)

[2] In the interim, between the issuance of the Commission's final order and the adoption of a procedural rule governing full stipulations, procedures were established for cases resolved by stipulation of all parties and all issues. The procedures require submission of evidence; allow the examiner to ask clarifying questions; allow the examiner to submit the stipulation and record to the Commissioners with a memorandum rather than an examiner's report; allow the opportunity for a full evidentiary hearing if the Commission rejects or modifies the stipulation; and encourage the utility to agree, as part of the stipulation, to extend its effective date. (p. 1395)

Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

Marta Greytok
Chairman

Jo Campbell
Commissioner

November 10, 1989

TO ALL PARTIES OF RECORD

Re: Docket No. 8790--Application of Southwestern Bell Telephone Company to Offer an Experimental Optional Calling Plan (Discounted IntraLATA Rates)

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 on Friday, December 8, 1989, at 9:00 a.m., at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas. Exceptions, if any, to the Examiner's Report must be filed in writing by noon on November 17, 1989. Replies to the exceptions, if any, must be filed in writing by noon on November 28, 1989.

Pursuant to P.U.C. PROC. R. 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 December 4, 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 want to. A copy of the signed order will be mailed to you shortly after the final order meeting.

Summary of Examiner's Report

The deadline for Commission action in this docket, pursuant to PURA Section 43, is December 31, 1989. This is an application by SWB and several participating LECs to provide, on a 12-month trial basis discounted intraLATA toll packages. The purpose of the trial offering is to obtain market information to determine which types of discounted packages would be of interest to customers in various types of markets. In addition to the LECs, MCI, AT&T, and the general counsel participated in this

docket. All parties entered into a full stipulation. Having reviewed the record and asked several questions concerning the stipulation during the hearing on the merits, the examiner recommends that it be adopted.

Sincerely,

J. Kay Trostle

J. Kay Trostle
Administrative Law Judge

lsw

Enclosures

DOCKET NO. 8790

APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO OFFER AN EXPERIMENTAL OPTIONAL CALLING PLAN (DISCOUNTED INTRALATA RATES)	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Procedural History

On April 25, 1989, Southwestern Bell Telephone Company (SWB) and several participating local exchange companies (LECs) filed an application to introduce an Optional Calling Plan (OCP) on a trial basis. The OCP involves a predetermined monthly fee for which the customer receives some form of discount on applicable intraLATA usage.

The effective date of the proposed offering was imputed to be 35 days following the filing, or May 30, 1989. Implementation of the proposed tariffs and rates was suspended pursuant to Tex. Rev. Civ. Stat. Ann. art. 1446c (PURA) Section 43(d) and P.U.C. SUBST. R. 23.24(i), for 150 days or until October 27, 1989. Following completion of publication on July 19, 1989, the effective date was established as July 20, 1989. Subsequent delays in the hearing, granted at the request of the applicant, resulted in a 14-day extension of the effective date, to August 3, 1989. The 150-day suspension period therefore extends to December 31, 1989. The following is a list of the applicants which will be collectively referred to as the participating LECs: GTE Southwest Inc., Contel of Texas, Inc., Guadalupe Valley Telephone Cooperative, Inc., Industry Telephone Company, Lake Livingston Telephone Company, Taylor Telephone Cooperative, Inc., Brazoria Telephone Company, Inc., Fort Bend Telephone Company, Inc., Lake Dallas Telephone Company, Inc., Central Telephone Company of Texas, Kerrville Telephone Company, Lufkin-Conroe Telephone Exchange, Inc., and United Telephone Company of Texas, Inc.

MCI Telecommunications Corporation (MCI) and AT&T Communications of the Southwest, Inc. (AT&T) were granted intervenor status in this proceeding. Mr.

Nathan Oxhandler submitted written public comments and appeared at the hearing.

SWB and the participating LECs published notice of the application once each week for four consecutive weeks in the areas affected by the proposed trial service offering. Notice was also provided to all affected utility customers by mail or hand-delivery, and to the appropriate officer of each affected municipality.

The hearing on the merits, originally scheduled for September 12, 1989, was postponed twice at the request of SWB. The hearing was convened on October 16, 1989, and adjourned on the same day. The evidence adduced at the hearing includes a stipulation signed by all parties and included herein as Attachment I; all prefiled testimony of all parties and the general counsel; the application with all attachments; the publishers' affidavits and affidavits regarding notice filed by SWB and the participating LECs; and the live testimony of SWB witness Kimberly Flores.

II. Jurisdiction

SWB and the participating LECs are each public utilities and dominant carriers as defined in Section 3(c)(2)(B)(iii) of PURA. The Commission has jurisdiction over this application pursuant to Sections 16(a), 18(b) and 43(a) of PURA.

III. Legal Effect of Certain Provisions of the Stipulation

After reviewing all the evidence submitted, including answers to clarifying questions regarding the stipulation, the examiner is prepared to recommend its adoption by the Commission. However, as the examiner advised the parties in Examiner's Order No. 8, issued prior to the hearing on the merits, certain provisions of the stipulation which appear to require the Commission to provide a second hearing in this docket, are not legally binding on the Commission. Specifically, the parties' waiver of cross-examination of

witnesses was conditioned on the ALJ's support (paragraph 5) and implicitly, the Commission's approval (paragraphs 5 and 8) of the stipulation without modification. This condition is contrary to Commission precedent insofar as it appears to entitle the parties to a second hearing. In its Final Order in Docket No. 5109, Application of Pedernales Electric Cooperative, Inc. to Increase Rates, 10 P.U.C. BULL. 1258, 1262 (September 29, 1983), the Commission adopted the examiner's reasoning to the effect that parties to a stipulation do not have a right to a second hearing if the Commission modifies a stipulation. A copy of the pertinent provisions of the Examiner's Report is included herein as Attachment II.

In response to Examiner's Order No. 8, the parties to this case filed a "Joint Motion for Continuance." The parties sought to have the hearing on the merits, set for the following business day, be redesignated as a prehearing conference. The purpose of the "prehearing conference" would be to allow the parties and general counsel the opportunity to introduce the stipulation and address and answer any clarifying questions. In the joint motion, the parties cited numerous dockets wherein the Commission adopted stipulations with "virtually identical language" which allowed signatories to withdraw consent to a stipulation if the stipulation was modified by the Commission. The motion further states that the parties would request that a date for a new hearing on the merits not be established in this docket unless and until the Commission determined that the stipulation was not in the public interest. SWB agreed to extend its effective date for the period of time necessary to obtain the Commission's approval of the stipulation or, if the stipulation was found not to be in the public interest, to conduct the hearing on the merits.

Due to the timing of the filing of the motion, the examiner ruled on it upon convening the hearing on October 16, 1989. The motion was denied for several reasons. The examiner pointed out that the cases cited in the motion in support of the movants' argument that stipulations have been adopted allowing signatories to withdraw consent upon modification by the Commission, were unpersuasive because none of those dockets indicate that the provision in question was acted upon, i.e., there was no instance in which a stipulation

was modified by the Commission and therefore a second hearing was granted based on such a provision in the stipulation. The examiner found that there were several courses of action that the Commission could permissibly take based on the record which might involve modifications to the stipulation, but which would not entitle the parties to a second hearing. For example, the Commission could modify the stipulation on a question of law; the Commission could find there was no evidence on an issue that it found relevant. The Commission could also remand the case, but the second hearing would then arise from the remand order and not from the parties' stipulation. The examiner also pointed out that SWB and the participating LECs retained the right to withdraw the application, without prejudice to refiling, at any time prior to the signing of a final order. This would mean that even following an oral vote and the conclusion of a final order meeting, the applicants could withdraw their application.

Additional argument on this legal point was presented at the hearing. The examiner invited the parties to brief the point and told them that she would present their legal argument to the Commissioners in this Examiner's Report. The parties declined to brief the issue and indicated that they would "wait for the examiner's report and then take such action as may be appropriate." (Hearing on the merits transcript at page 53.)

The examiner concludes that the analysis presented in Docket No. 5109 is legally correct. The parties have argued that this ruling will act to discourage stipulations in the future because the risk of Commission alterations is too great a risk to take. The examiner's position on stipulations has been the rule at the Commission for some time, and has not seemed to discourage stipulations, as evidenced by the cases cited by the parties in their Joint Motion discussed above. The examiner obviously raised more concerns than were warranted by bringing this legal issue to the parties' attention prior to the hearing on the merits. The examiner's position is that the noticed hearing is the parties' opportunity to present evidence and to conduct cross-examination. If they choose to waive that opportunity, the Commission is free to act upon the evidence adduced at the hearing in

accordance with its statutory mandate. The parties may not limit the Commission to the set of facts agreed to by the parties. If the parties view this authority as involving too great a risk, they can limit the breadth of the Commission's action in several ways. The parties' first protection or guarantee that their stipulation will be adopted without modification, is to provide stipulations that are in the public interest, and reasonable. This means that the stipulation should be in accordance with all the criteria of PURA and the Commission's substantive rules. The parties may also agree to submit only evidence which supports the stipulation and withdraw all other prefiled evidence. If the parties submit only that evidence which is sufficient to support a legally defensible stipulation, there is no basis for arguing that the risk of entering into a stipulation which the Commission could modify without further hearing is too great.

Therefore, finding that the proposed stipulation is supported by the evidence introduced at the hearing and as in the public interest, the examiner recommends that it be adopted, but that the Commission find as a matter of law that the parties are not entitled to another opportunity for another hearing or another opportunity to cross-examine the witnesses whose testimonies were introduced at the hearing on the merits.

IV. Description of Application and Recommendation

The proposed optional calling plan (OCP) is an offering wherein a customer may subscribe to a packaged intraLATA discounted long distance message telecommunications service arrangement. SWB and the participating LECs are proposing to make such a service offering available on a trial basis for a 12-month period. The OCP trial period will be uniform for SWB and participating LECs and will be for 12 consecutive calendar months. The 12 calendar month period will commence at such time as the first customer of SWB or a participating LEC actively begins receiving service pursuant to an OCP trial. The OCP trial period will terminate, regardless of when it commenced, not later than 18 months following the Commission's final order in this docket. The purpose of the trial is to allow SWB and the participating LECs

to learn more about the intraLATA toll market and what type of pricing options appeal to customers. Upon completion of the 12-month trial, the OCP plans will be withdrawn and the applicants will evaluate the results of the trial. If the trial proves to be successful, SWB plans to file, with the LECs' concurrence, a statewide tariff offering for both business and residential customers.

Included as Attachment III is a list of the various areas participating in the trial, with the type of toll discount plan being offered, as well as an indication of which LEC is offering the toll options. The trial locations and options were structured to provide as much variation as possible. As is evident from Attachment III, there are three different types of OCP discounts which will be available during the trial. Under a "discount plan" a customer, for a given monthly subscription or fee, will receive a fixed percentage discount off of existing toll rates. There will be seven residential and 13 business discount plan options during the OCP 12-month trial period.

Under the the "tapered discount plans", for a monthly subscription price, a customer will receive discounts that increase with usage levels. For example, for a $2.00 buy-in fee the customer would receive a 10 percent discount on calling until the applicable usage reaches a certain level and then the customer would receive a greater discount on all subsequent usage. SWB plans to offer three residential and two business tapered discount plans during the OCP trial.

The third type of toll option will be a "block-of-time discount plan". This will offer a customer the option for a given monthly subscription fee to receive a fixed block of time of intraLATA calling. Subsequent usage is billed at a different hourly rate. For example, for $10.00 the customer would receive one hour of usage and additional hours would cost $9.00 per hour. The rate for additional hours will be prorated for fractional hours of usage. SWB plans to offer two residential and two business block-of-time plans during the OCP trial.

The proposed OCP trial rates will cover the cost of providing toll. At discounts ranging from 10 percent to 25 percent, the resulting rate will still be higher than the cost of toll. All applicable rate period discounts currently tariffed for toll (evening, night, and weekend) will apply in addition to the OCP discount. Non-recurring charges associated with order issuance will be waived during the trial period to encourage customers to participate. Finally, there will be time-of-day restrictions on the residential options for the Houston LATA OCP, and the Graham, Marshall, and Mutual Exchange OCPs.

Since SWB has not previously implemented an intraLATA OCP in other areas, it can only project customer participation levels and revenue impact. Based upon analysis of specific customer toll bills in the proposed trial locations, SWB estimated the revenue reduction would be between $1.1 million and $4.5 million. The high end of the range assumes each customer chooses the option that produces the lowest total charge for his level of usage. The low end of the range assumes stimulation of customer participation by customers whose average intraLATA bills is marginally below, at, or above the break-even point of the OCP.

SWB and the participating LECs will file quarterly tracking reports that will contain the information outlined in Exhibit 1 of the stipulation. The information includes such items as monthly customers by option; minutes-of-use segregated by day, evening, and night-weekend; average length of conversation; and advertising, public notice, and telemarketing expenses. This tracking information will be designated as confidential proprietary information available only to the general counsel and Commission staff. Under the stipulation, if the information becomes relevant to another proceeding, the general counsel and intervenors reserve their right to seek to obtain the information and to challenge the confidential proprietary designation. The testimony of Ms. Flores at the hearing indicates that the information will be sensitive marketing data and will be relevant to other parties only at such time, if it occurs, that SWB and the other LECs offer a statewide discounted intraLATA plan. The information is being gathered in order to determine the

marketability of a future optional calling plan. The trial offering includes different types of customer options, and different types of discounts in different areas. All of that information is considered to be highly proprietary. Ms. Flores testified that competitors in other markets across the state could use this information to their advantage and SWB's disadvantage.

Due to billing system limitations, United Telephone Company of Texas, Inc. may be unable to participate in the OCP trial. United's participation in the trial service offering would necessitate the shifting of the Tax Reform Act (TRA) refund processing to an off-line processing system which would result in a one month delay of refunds to the subscribers. United is seeking Commission approval for a change in its processing of TRA refunds, but not as part of this proceeding. If United does not receive Commission approval of the request prior to the start up of the OCP trial, the 12 month trial period will not be extended. United is therefore not required to conduct an OCP trial.

Having reviewed the application, and all evidence submitted at the hearing, including the stipulation of the parties, the examiner recommends that the application for a trial optional calling plan for discounted intraLATA toll proposed by SWB and the participating LECs be approved. In addition, the tariff sheets, filed on October 30, 1989, included herein as Attachment IV, should be approved in the final order in this docket.

V. Findings of Fact and Conclusions of Law

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

A. Findings of Fact

1. On April 25, 1989, Southwestern Bell Telephone Company (SWB) filed an application to introduce, on a trial basis, an optional calling plan (OCP)

which allows customers to subscribe to packaged intraLATA discounted long distance message telecommunications service.

2. The following local exchange companies (LECs), hereinafter referred to collectively as the participating LECs, will also participate in the trial OCP offering: GTE Southwest Inc., Contel of Texas, Inc., Guadalupe Valley Telephone Cooperative, Inc., Industry Telephone Company, Lake Livingston Telephone Company, Taylor Telephone Cooperative, Inc., Brazoria Telephone Company, Inc., Fort Bend Telephone Company, Inc., Lake Dallas Telephone Company, Inc., Central Telephone Company of Texas, Kerrville Telephone Company, Lufkin-Conroe Telephone Exchange, Inc., and United Telephone Company of Texas, Inc.

3. An effective date 35 days following the filing, or May 30, 1989, was imputed. Implementation of the proposed tariffs and rates was suspended for 150 days. Upon completion of notice, the effective date was determined to be July 20, 1989. The applicant subsequently extended its effective date 14 days in order to obtain a continuance of the hearing on the merits. The new effective date was therefore established as August 3, 1989, and the 150-day suspension period was calculated to end December 31, 1989.

4. Notice of the application was published once each week for four consecutive weeks in areas affected by the proposed trial service offering; was provided to all affected utility customers by mail or hand-delivery; and was delivered to the appropriate officer of each affected municipality.

5. MCI Telecommunications Corporation (MCI) and AT&T Communications of the Southwest, Inc. (AT&T) were granted intervenor status. Mr. Nathan Oxhandler participated by providing written public comment.

6. The hearing on the merits was held on October 16, 1989.

7. SWB and the participating LECs will commence a trial of various OCP offerings as described in Section III of the Examiner's Report.

8. The purpose of providing this optional calling plan on a trial basis is to allow SWB and the participating LECs to learn more about the intraLATA toll market and what type of pricing options appeal to customers.

9. The trial locations and various options were structured to provide as much variation as possible in order to provide the information needed for marketing purposes.

10. Following the trial, SWB and the participating LECs will determine whether to propose a statewide optional calling plan.

11. The proposed trial rates will cover the cost of providing toll. At discounts ranging from 10 percent to 25 percent, the resulting rate will still be higher than the cost of toll.

12. The estimated revenue reduction expected by SWB attributable to this trial offering will be between $1.1 million and $4.5 million. The lower end of the projected range of revenue reductions assumes some stimulation of participation by SWB.

13. The tariff is offered as an industry filing because independent LECs in Texas can concur in SWB's intrastate Long Distance Message Telecommunications Service Tariff.

14. Due to billing system limitations, United Telephone Company of Texas, Inc. may be unable to participate in the OCP trial. United's participation in these OCP trials will necessitate the shifting of the Tax Reform Act (TRA) refund processing to an off-line processing system which will result in a one month delay of TRA refunds to the subscribers. United is seeking Commission approval for a change in its processing of TRA refunds, but not as part of this proceeding. If United does not receive Commission approval of the request prior to the start up of the OCP trial, the 12 calendar month trial

period will not be extended. United is not, by this Order, required to conduct an OCP trial.

B. Conclusions of Law

1. SWB and the participating LECs are each a public utility as that term is defined in Section 3(c) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1989), and therefore are subject to this Commission's jurisdiction.

2. The Commission has jurisdiction over the matters considered herein pursuant to Sections 16(a), 18(a) and 43(a) of PURA.

3. Notice of the application was given pursuant to PURA Section 43(a) and P.U.C. PROC. R. 21.22(b).

4. Approval of the trial optional calling plan is in the public interest.

5. The rates adopted herein are in accordance with Section 38 of PURA insofar as they are just and reasonable, not unreasonably preferential, prejudicial or discriminatory, and are sufficient, equitable and consistent in application to each class of consumers.

6. Contrary to the assertions in the stipulation, the Commission is authorized to modify the desired outcome specified in a stipulation made by parties, to the extent supported by the record and by the mandates of PURA,

without creating a right to a new hearing or for a new opportunity for cross-examination of witnesses.

Respectfully submitted,

J. KAY TROSTLE
ADMINISTRATIVE LAW JUDGE

APPROVED on this the 10th day of November 1989.

MARY ROSS McDONALD
DIRECTOR OF HEARINGS

lsw

ATTACHMENT I

DOCKET NO. 8790

APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO OFFER AN EXPERIMENTAL OPTIONAL CALLING PLAN (DISCOUNTED INTRALATA RATES)	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

STIPULATION OF THE PARTIES AND GENERAL COUNSEL

WHEREAS, on April 25, 1989, Southwestern Bell Telephone Company ("Southwestern Bell") filed a revision to Southwestern Bell's intrastate Long Distance Telecommunications Service Tariff introducing a trial service offering called the Optional Calling Plan ("OCP"), which OCP would trial a subscriber selected service whereby the customer would pay a predetermined monthly fee to receive some form of a discount on applicable intraLATA usage; and

WHEREAS, GTE Southwest Incorporated, Contel of Texas, Inc., Guadalupe Valley Telephone Cooperative, Inc., Industry Telephone Company, Lake Livingston Telephone Company, Taylor Telephone Cooperative, Inc., Brazoria Telephone Company, Inc., Fort Bend Telephone Company, Inc., Lake Dallas Telephone Company, Inc., Central Telephone Company of Texas, Kerrville Telephone Company, Lufkin-Conroe Telephone Exchange, Inc., and United Telephone Company of Texas, Inc. (hereinafter collectively referred to as "participating LECs") have been granted intervenor status and will participate in the trial of the OCP offering;

WHEREAS, MCI Telecommunications Corporation ("MCI") and AT&T Communications of the Southwest, Inc. ("AT&T") have been granted intervenor status in this proceeding; and

WHEREAS, Southwestern Bell, the participating LECS, MCI, AT&T and General Counsel have agreed to a procedure which will allow Southwestern Bell and the participating LECs to implement a trial of various OCP offerings which are fully described in Southwestern Bell's April 25, 1989 filing for the purpose of gathering information which may be used at such time as Southwestern Bell and/or the participating LECs elect to file a proposal for a statewide OCP offering; and

WHEREAS, Southwestern Bell, the participating LECs, MCI, AT&T and General Counsel agree that any and all issues not expressly agreed upon in this Stipulation will be reserved until such time as a statewide OCP offering is proposed or until the issues are relevant to a rate case proceeding involving Southwestern Bell and/or the participating LECs.

NOW, THEREFORE, the parties and General Counsel stipulate as follows:

1. Southwestern Bell and the participating LECs will commence a trial of the various OCP offerings described in Southwestern Bell's April 25, 1989 filing in the areas and pursuant to the rates and conditions as set forth in said filing. The OCP trial period shall be uniform for Southwestern Bell and all participating LECs and shall run for a period of twelve

consecutive calendar months. The twelve calendar month period will commence at such time as the first customer of Southwestern Bell or a participating LEC actively begins receiving service pursuant to an OCP trial. The failure of Southwestern Bell or a participating LEC to timely commence its trial shall not operate to extend the twelve calendar month period for that company. The OCP trial period shall terminate, regardless of when it commenced, not later than eighteen months following the Commission's final order in this docket.

2. Southwestern Bell and the participating LECs agree to file quarterly tracking reports which will include, by month, the information listed in the attached Exhibit No. 1. To the extent any participating LEC does not have the technical capability to track any specific information listed on the attached Exhibit No. 1, the participating LEC must provide the Commission with an explanation of such inability, accompanied by an affidavit, and, if possible, a proposal for a surrogate method to estimate the information to be tracked. All tracking information filed by Southwestern Bell and the participating LECs, as well as any aggregation or summary thereof, will be designated as confidential proprietary information which is to be available only to General Counsel and the Commission Staff. In the event the information is relevant to another proceeding, then General Counsel and the intervenors do not waive their right to seek to obtain the information and to challenge the confidential

proprietary designation and attempt to use the information in such proceeding.

3. All parties and General Counsel agree that all issues regarding the use of the information gathered in the tracking report as well as all other issues which are not specifically addressed by this Stipulation, are to be reserved until such time as Southwestern Bell and/or the participating LECs file a statewide OCP offering or a rate case proceeding. Even those issues specifically addressed are waived only to the extent necessary to allow the trial OCPs. The parties and General Counsel agree that the information to be gathered in connection with the trial of the OCP offerings may be relevant to a statewide OCP offering and will assist the parties and the Commission in making a determination of issues related to a statewide OCP offering.

4. The sole intention of the parties and General Counsel through this Stipulation is to allow Southwestern Bell and the participating LECs to conduct a trial of the OCP offerings as described in Southwestern Bell's April 25, 1989 filing. The trial of the OCP offerings is for the purpose of gathering information which may be used at such time as Southwestern Bell and/or the participating LECs elect to file a proposal for a statewide OCP offering. It is not the intention of this agreement to resolve any issues among and between the parties and General Counsel regarding the appropriateness of a statewide OCP

offering or any other OCP offering than the trial OCPs that are the subject of this docket.

5. Any testimonies, documents and other materials supplied by the parties and General Counsel are admissible for the limited purpose of supporting the Stipulation in accordance with rule 105 of the Texas Rules of Civil Evidence. Said testimonies, documents and other materials are only intended to be considered to the extent deemed necessary by the Administrative Law Judge to support approval of this Stipulation. In the event any testimonies, documents or other materials are admitted in this or any other proceeding for any other purpose, then the parties and General Counsel reserve their full rights to challenge such evidence, including objections to admission, and the right of cross examination.

6. All parties and General Counsel stipulate to the admission of the following exhibits and waive cross-examination in accordance with the provisions of paragraph 5, supra:

a. This Stipulation of the Parties and General Counsel;

b. Direct testimony of Southwestern Bell witness, Chris T. Bowers;

c. Direct testimony of Southwestern Bell witness, Kimberly J. Flores;

d. Direct testimony of Southwestern Bell witness, Donald J. Kridel;

e. Direct testimony of Southwestern Bell witness, Deborah Tung;

f. Direct testimony of GTE Southwest Incorporated witness, Dana T. Bolin;

g. Direct testimony of TSTCI witness, Roger Hutton;

h. Direct testimony of United Telephone Company of Texas witness, Bill C. Terry;

i. Direct testimony of MCI witness, Mark Bryant;

j. Direct testimony of Public Utility Commission of Texas Staff witness, John Costello;

k. Supplemental Testimony of Southwestern Bell witness, Kimberly J. Flores; and

l. All publishers' affidavits and other affidavits regarding notice filed by Southwestern Bell and the participating LECs.

7. This Stipulation is intended as a settlement of the procedures which will permit Southwestern Bell and the participating LECs to implement the OCP trials which are the subject of this docket and is not intended as a resolution of any other issue in any other proceeding.

8. If this Stipulation is modified in any respect by the Commission, then all parties and General Counsel reserve the right to withdraw their consent to this Stipulation.

9. It is agreed by all parties and General Counsel that, due to billing system limitations, United Telephone Company of

Texas, Inc. ("United") may be unable to participate in the OCP trial if United is unable to modify the procedures for making its Commission ordered TRA refunds. United is taking the steps necessary to modify the TRA refund procedure, however, United cannot guarantee that it will be successful. Therefore, notwithstanding any language to the contrary, nothing herein shall be construed to require United to conduct an OCP trial, or as an agreement or promise by United to participate in such trial, in the event United is unsuccessful in modifying its TRA refund procedure.

10. This Stipulation is effective as of October 9, 1989, regardless of the day of actual execution by the signatories.

Respectfully submitted,

L. Kirk Kridner
Attorney
SOUTHWESTERN BELL TELEPHONE COMPANY

Becky Bruner
Assistant General Counsel
PUBLIC UTILITY COMMISSION OF TEXAS

Brook Bennett Brown
Brook Bennett Brown
MCGINNIS, LOCHRIDGE & KILGORE
CENTRAL TELEPHONE CO. OF TEXAS
KERRVILLE TELEPHONE COMPANY
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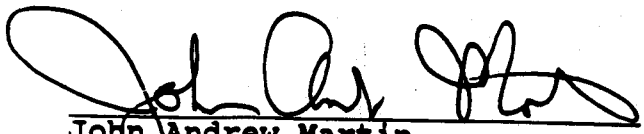

John Andrew Martin
CARRINGTON, COLEMAN, SLOMAN &
BLUMENTHAL
CONTEL OF TEXAS, INC.

Don R. Richards
MCWHORTER, COBB AND JOHNSON
GUADALUPE VALLEY TELEPHONE COOP
INDUSTRY TELEPHONE CO.
LAKE LIVINGSTON TELEPHONE CO.
TAYLOR TELEPHONE COOP

John F. Bell, Jr.

John F. Bell, Jr.
MURPHY, SHRULL, MOORE & BELL
BRAZORIA TELEPHONE COMPANY, INC.
FORT BEND TELEPHONE COMPANY, INC.
LAKE DALLAS TELEPHONE COMPANY

Maria Kendro

Maria Kendro
Attorney
UNITED TELEPHONE COMPANY OF
TEXAS, INC.

EXHIBIT 1

OPTIONAL CALLING PLAN
ITEMS TO BE TRACKED/PROVIDED

1. Total MTS customers by month
2. Total Optional Calling Plan (OCP) customers by month by OCP option
3. OCP Customer Minute of Use segregated by day/evening/night-weekend by OCP option
4. OCP Customer Messages segregated by day/evening/night-weekend by OCP option
5. OCP revenues segregated by day/evening/night-weekend by OCP option
6. OCP Average length of conversation segregated by day/evening/night-weekend by OCP option
7. OCP Customer count and movement data by month by OCP option including:
   a) number of OCP customers
   b) number of new requests for OCP service (INWARD)
   c) number of requests for disconnection of OCP service (OUTWARD)
8. Non-recurring charges not recovered by OCP option
9. Advertising expenses
10. Brochures and direct mail program expenses
11. Program software enhancement expenses
12. Public Notice expenses
13. Telemarketing expenses
14. Other recurring and non-recurring expenses/costs directly related to the OCP trial which are not otherwise covered by Southwestern Bell's DDD cost study and/or this Exhibit 1.

15. At the conclusion of the trial, Southwestern Bell will prepare a model to analyze the results of the trial and make projections regarding a statewide OCP offering. The modeling information and the data used to develop the model will be available, subject to an appropriate protective orders, in a proceeding proposing a statewide OCP offering. The information which will be either included in the model or available for review includes the following:

    a. Estimated stimulation by OCP option and predicted stimulation for statewide offering.
    b. Sample of approximately 100,000 customers (both OCP subscribers and non-subscribers) will be prepared which includes usage for the 12-month period prior to the OCP trial and the 12-month period during the trial.
    c. Survey of approximately 20,000 of the 100,000 customers will be made to determine reasons for buying or not buying, effect on usage, etc.
    d. Appropriateness of buying decisions by various economic criteria.

16. Southwestern Bell agrees to make the following information available subject to the terms of an appropriate protective order:

    a. Average length of call based on billed minutes as reflected in the Sampled Tariff Analysis and Report System (STARS).
    b. Average length of haul by rate band by time of day as reflected in STARS.
    c. Attempt ratio of completed calls to attempted calls as reflected in Southwestern Bell's Texas IntraLATA DDD incremental cost study.
    d. Average Set-up Minutes per Message as reflected in Southwestern Bell's Texas IntraLATA DDD incremental cost study. Southwestern Bell stipulates that this average set-up time is identical to the average set-up time for Southwestern Bell's OCP calls pursuant to this trial.

than 8,500 miles of distribution line.

PEC sought a total revenue rquirement of $63,703,563, but the stipulation provides for a total cost of service (revenue requirement) of $55,836,269. That amount is less than the cost of service recommended by any of the parties' direct cases. The base rate revenue requirement (excluding fuel, purchased power, and other revenues) stipulated to is $15,570,517, again less than that found by any of the witnesses.

[1] The examiner recommends adoption of the stipulation, but disagrees with the assertions therein that the Commission is bound to accept the terms of the agreement. It is the examiner's opinion that the parties to a stipulation may formally stipulate to a certain set of "facts" and agree with one another not to contest same, but they may not bind the Commission to those facts. Of course as a general rule, the Commission may not base its order on facts of which there is no evidence in the record, but it cannot be required by the parties to find as the parties stipulate and to conclude as the parties would dictate. In private litigation, parties can settle a pending case by payment of consideration, agreement to perform specified acts, etc. and merely withdraw the pleadings or agree to dismissal. Such is not case with issues which affect the public interest, including regulatory matters. The parties in the instant docket, for example, cannot agree to allow PEC a given rate increase and join in a unified motion to dismiss the action. The criteria of the PURA must be met by the settlement, and the agreed rate increase is of no effect if not ordered by the Commission.

It bears stressing that the parties may agree to certain facts at the hearing, and they may commend certain legal conclusions to the Commission, but the noticed hearing when the evidence is taken <u>is</u> the hearing, whether the evidence includes a stipulation or not. For that reason Section XVIII.2. of the stipulation, which asserts that the stipulation is "an integrated settlement and shall cease to bind the parties or affect their right to a hearing in the event of any modification," is in large part a non-binding legal conclusion. The intent of the "stipulation" is evidently to assert the right of parties to a new hearing if the Commission deviates from the terms of the document, but strictly read, the latter part of the quoted sentence it is not erroneous. The hearing has been conducted, the parties introduced all of the evidence on which they relied, and their right to additional hearing because of any Commission decision not to adopt every jot and tittle of the agreement is nil.

Neither the examiner who presides over, nor the staff members who participate in, a rate hearing may with any authority promise the parties that an agreement will be adopted by the Commission. In this agency, parties and examiner propose final resolution of issues, while Commissioners alone are empowered to dispose of substantive issues. Given the short timetable mandated by the legislature for rate cases, the prospect of a party's agreement at hearing "rescinded" weeks later when the proposal is submitted to the Commission, and bypassed by a subsequent hearing on remand (after, of course, statutorily required notice to the parties and the public), threatens to thwart the efficient and equitable disposition of rate cases. Such twisted precepts as would allow mischievious litigants (the examiner does not

allege that any are present in this case, but speaks hypothetically) to engage in sandbagging simply cannot be followed in settled rate cases. Parties must be put on notice that the time established for the taking of evidence is the hearing, and that they are simply at risk if a stipulation of facts is entered. The Commission cannot be bound by the parties' agreement, and parties' disappointment over the Commission's variance from it cannot create a right to new hearing, no matter how clamorously voiced.

Therefore, although the instant settlement is perceived by the examiner as a fair one, and one that serves the public interest, and although the report recommends that the terms of the agreement be embodied in the final order, final resolution of the application is not limited to the treatment to which the parties agreed. Any changes which the Commission would make to the proposed order would not create some right to new hearing for the parties, although that circumstance might require that the Commission address the issue of refunds due. [As stated above, PEC has filed a bond pursuant to PURA §43(e).]

B. Rate of Return

PEC requested a rate of return on invested capital of 9.5 percent, which would produce $7,960,468 if applied to the utility's requested invested capital figure. Staff witness Beverly Bonevac reviewed the rate package, the coop's answers to requests for information, and the financial condition of the applicant; she concluded that the sought rate of return was reasonable, although the staff decreased PEC's requested invested capital. Application of the 9.5 percent figure to the staff's invested capital figure yields $7,606,299, which return dollars the staff recommended be included in PEC's cost of service. The cities' witness J. Worth Kilcrease II, using an empirical formula developed by the REA and CFC, recommended that a rate of return of 8.5 percent resulting in $7,088,637 in return, be allowed. Engineer Thomas L. Boudreaux filed rebuttal testimony on behalf of Pedernales, and urged that the proper focus of a return analysis for a cooperative is not the rate of return, but is instead the actual return dollars allowed.

The stipulation provides for a return on invested capital of $7,422,671, and a rate of return of 9.27 percent. This facet of the parties' agreement is within the range of recommendations of the various witnesses, and the examiner believes it is an acceptable compromise, one which is not at odds with the probable result had the issue been fully litigated. Strictly reserving pronouncement upon the merits of the positions urged by the expert witnesses, the Commission should adopt the return stipulation.

C. Original Cost, Depreciation, Quality of Service

Staff engineer Kent Saathoff considered the reasonableness of PEC's proposed depreciation rates, finding the proposed rates to be within recommended REA guidelines, which are conservative. He also compared the proposed rates with other electric utilities in Texas, including Central Power and Light Company, Texas Electric Service Company, El Paso Electric Company, and Texas Power and Light Company. He found the coop's proposed depreciation rates generally lower. He concluded, after comparing the applicant's depreciation rates with those applied by

PLAN DESCRIPTIONS BY LEC

EXCHANGE/LATA	PLAN OPTIONS	LECs
Houston lata	Discount or tapered discount	SWB BRAZORIA TELEPHONE CENTEL CONTEL FORT BEND GTSW INDUSTRY LAKE LIVINGSTON LUFKIN-CONROE UNITED
Waco lata	Discount or block of time	SWB CENTEL CONTEL GTSW UNITED
Balcones/Bulverde	Discount or tapered discount	Guadalupe Valley
Buffalo Gap	Discount or tapered discount	TAYLOR
Denton	Discount	GTSW
Georgetown	Discount	GTSW
Graham	Discount or block of time	SWB
Harper	Discount or block of time	KERRVILLE
Kerrville	Discount or block of time	KERRVILLE

Lake Dallas	Discount	LAKE DALLAS
Marshall	Discount or tapered discount	SWB
Mission	Discount or tapered discount	SWB
Mutual	Discount or block of time	SWB

ATTACHMENT IV
(Tariff Sheets)
was not published

DOCKET NO. 8790

APPLICATION OF SOUTHWESTERN BELL TELEPHONE TO OFFER AN EXPERIMENTAL OPTIONAL CALLING PLAN (DISCOUNTED INTRALATA RATES)	§ § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

SUPPLEMENTAL EXAMINER'S REPORT

An Examiner's Report in this docket was issued on November 10, 1989. In Section III of that report, there is a discussion of the legal effect of certain provisions of the stipulation. The examiner concluded that signatories to a stipulation may not legally bind the Commission to afford them a second opportunity for a hearing in the event the Commission modifies a stipulation. The examiner noted that the parties declined to brief their position on this issue. Instead, some of the parties have now filed exceptions (Southwestern Bell Telephone Company (SWB)) or "replies to exceptions" [1] (MCI, Central Telephone, et al., Brazoria Telephone Company, et al., Guadalupe Valley, et al., and Contel of Texas) in which their arguments are set out for the Commissioners' consideration. This Supplemental Report is issued in order to address the arguments raised in the parties' exceptions and replies to exceptions. The relief requested by the parties is rejection of Conclusion of Law No. 6.

The first authority cited by SWB in its brief is §13(e) of the Administrative Procedure and Texas Register Act (APTRA), which states:

> Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

This provision allows an agency to dispose of fully stipulated contested cases through an informal process. The Commission routinely handles unprotested telephone and electric CCN cases under this provision. However, the

[1] "Replies to exceptions" is set out in quotations because the pleadings are statements in support of SWB's exceptions, and do not present any positions different than those raised at the hearing.

Commission has always required that stipulations reached in contested cases be supported by evidence. This is a policy decision which the examiner understands to be based on the Commission's determination that it must have before it evidence of the facts stipulated to in order to fulfill its affirmative duty to protect the public interest. As will be discussed below, the Commission could alter this policy.

SWB complains that "to the extent the ALJ asks clarifying questions at the time a stipulation is offered, as the ALJ did in this proceeding, evidence which the parties did not contemplate in making the stipulation is added to the record." SWB Exceptions at 6. SWB argues that the ALJ's questions result in the introduction of evidence which could provide record support for the Commission to modify the parties' agreement. [2] If examiners are to continue issuing reports which explain stipulations and the supporting evidence, it is imperative that the authority to ask clarifying questions remain intact. In some instances, clarifying examination is the only means of insuring that all interests, including those of non-parties, are served by a stipulation. It also affords perhaps the only opportunity to ensure that the stipulation is in conformance with PURA, Commission rules, and precedent established by previous Commission decisions. These are issues which the parties may have little interest in addressing or which may have been inadvertently overlooked during negotiations. While the general counsel represents the public interest and may be of the opinion that the public interest is protected by a stipulation it is the Commission that must make that determination. To make that decision, the Commission has historically required parties to submit evidence to prove that the stipulation is in the public interest.

SWB's suggestion at page 6 of its exceptions, that the ALJ considered all of the evidence even though the tender of evidence was limited to that necessary to support the stipulation, is erroneous. The examiner understands

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[2] The Commission should not be mislead into believing that the evidence arising from the examiner's questions in this docket would support any modification to the stipulation. In fact, the evidence adduced as a result of the examiner's clarifying questions is the only evidence supporting at least one provision of the stipulation, the need for reports to be filed under seal.

that the parties are entitled to limit their tender of evidence; that is why the Examiner's Report addresses only those facts which support the stipulation, which is all the evidence in this record. This is an evidentiary issue which further supports the position set out on page 5 of the Examiner's Report to the effect that one way the parties can limit the breadth of the Commission's action in a stipulated case is to submit only that evidence which supports the stipulation.

SWB's next argument is that if the Commission reserves "the right to modify a settlement agreement, then parties will be forced to make a record to support their initial positions even though such positions may well be contrary to the stipulation which they have reached." SWB exception at page 4. The examiner finds this argument unpersuasive for several reasons. First, the procedures established in virtually every case require all parties to prefile all evidence upon which they intend to rely. This means the parties are expected to be ready on the first day of the hearing to make a record to support their respective positions. This examiner has never presided over a hearing where parties prefiled a stipulation instead of evidence in support of their respective positions. Second, even when all parties sign a stipulation, they often still tender all prefiled evidence (without limitation), in addition to the evidence created specifically to support the stipulation. (As discussed above, the parties followed the innovative procedure of offering all of their prefiled evidence but limiting the offer to that evidence which supports the stipulation.) For these reasons, the examiner is unpersuaded by SWB's argument that the Commission's power to modify a stipulation would force the parties to do anything that they are not already doing.

The parties conclude their arguments by requesting that the Commission not adopt proposed Conclusion of Law No. 6. [3] The examiner notes that rejection of that conclusion of law, (with the implication that these parties

[3] Brazoria Telephone Company, et al. also urges the Commission to reject Finding of Fact No. 6 (The hearing on the merits was held on October 16, 1989) as dicta. Contrary to Brazoria's assertion, the proceeding on that date was a hearing on the merits, notwithstanding the parties' desires to transform it into a prehearing conference and thereby create a second opportunity for a hearing.

would be entitled to a second hearing if the Commission modified the stipulation), when coupled with the Commission's current policy of requiring an evidentiary record in support of stipulations, would create a wasteful process involving duplicate (and probably inconsistent) evidentiary hearings. The first to take evidence in support of the stipulation. And a second hearing if any modification is made to the stipulation. The parties do not address how the evidence in the first hearing would be treated in the second hearing e.g. would it somehow cease to exist? be deemed no longer persuasive or competent? or be weighed along with the evidence adduced at the second hearing. If the Commission wants to do more to encourage stipulations, one practical resolution would be to waive the requirement of an evidentiary record in cases resolved by full stipulation agreed to by all parties. As discussed below, this would address many of the concerns raised by the parties. The examiner believes that the Commission has the power to determine as a matter of public interest that it wishes to encourage stipulations. The public interest considerations served by waiving the evidentiary record are conservation of public resources and settlement of litigation. This would make the stipulation process less burdensome, and at the same time the Commission could retain its authority to reject the stipulation and remand for a full hearing on the merits.

Certain procedural and practical matters should be carefully considered and weighed, however, before the Commission undertakes such a shift in policy. Waiver of an evidentiary record should be permitted, if at all, only in situations where all parties are signatories to a stipulation and the stipulation addresses all issues. If some parties disagree, they have the right to an opportunity to respond and present evidence on all issues. APTRA §13(d). The practical reality is that evidence tendered in support of a full stipulation is almost always created after the fact and the numbers are merely backed into. Requiring the parties to create evidence to support the compromise reflected in a stipulation serves little public purpose. Relieving the parties of the burden of preparing evidence in support of a stipulation would reduce the expense and conserve the resources of all parties and the Commission.

Fully stipulated rate cases present their own procedural concerns. In those cases which have jurisdictional deadlines, the Commission should require a utility to agree, as part of a stipulation, to extend its effective date day-for-day if the Commission rejects the stipulation. The effective date should be extended from the date the stipulation is filed until a remand hearing convenes. In this way, the Commission would not lose any time for consideration of the case by allowing a more streamlined process for stipulations.

The general counsel's participation in virtually every docket (with some complaint cases being the rare exception), and the general counsel's statutory duty to protect the public interest, add to the protection afforded to the public in settled cases. (As explained above, the examiner is aware that it is the Commission which ultimately must decide if the public interest is served by a stipulation.) The Commission might consider conditioning waiver of the evidentiary record on general counsel's agreement to the stipulation.

If the Commission chooses to undertake this new procedure, there is no requirement for a proposal for decision (Examiner's Report) under APTRA, because the "record" would consist of the stipulation. APTRA §I5. The Commission should therefore require that stipulations contain proposed findings of fact and conclusions of law. The examiner envisions stipulations would be submitted to the commissioners, with a memorandum from the examiner indicating that all parties had reached a full stipulation, and setting the final order meeting date for the Commission's consideration of the stipulation. The examiner could also prepare a proposed order adopting the stipulation. Under this procedure, should the Commission determine that the stipulation was not in the public interest, it could remand the docket for full hearing.

The examiner wishes to emphasize that the conclusion reached in the original Examiner's Report is based on a long-standing Commission policy. If the Commission agrees with the arguments advanced by the parties in this

docket that the procedure currently followed discourages settlement, it should modify the policy. This is a policy question to be determined by the commissioners, and the examiner does not intend to convey an opinion on this issue through this supplemental report. The discussion above concerning submission of stipulations without evidence to support them is intended as one possible way of facilitating full stipulations signed by all parties. Partial stipulations, whether of issues or parties, are an entirely different matter not discussed in this Supplemental Report. There are many complex dockets involving stipulations which the Commission will be hearing in the near future. Because the substantive issues in this docket are not particularly complex, and the examiner does not anticipate that there will be much controversy concerning the evidence, this is perhaps an ideal docket in which to reexamine and discuss the underlying Commission policy regarding the procedure for handling stipulations. Guidance from the Commissioners on this issue would be very helpful.

Respectfully submitted,

J. Kay Trostle

J. KAY TROSTLE
ADMINISTRATIVE LAW JUDGE

APPROVED this 5th day of December 1989.

Mary Ross McDonald

MARY ROSS McDONALD
DIRECTOR OF HEARINGS

/tlg

DOCKET NO. 8790

APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO OFFER AN EXPERIMENTAL OPTIONAL CALLING PLAN (DISCOUNTED INTRALATA RATES)	**§**	**PUBLIC UTILITY COMMISSION OF TEXAS**

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that, after statutory notice was provided to the public and interested persons, the application in this case was processed by an administrative law judge in accordance with the Commission rules and all applicable statutes. An Examiner's Report containing findings of fact and conclusions of law and a Supplemental Examiner's Report were submitted, which reports are hereby **ADOPTED** and made a part of this Order with the following modifications:

1. Conclusion of Law No. 6 and the portions of the Reports in support thereof are **NOT ADOPTED.**

[1] 2. Docket No. 5109, Application of Pedernales Electric Cooperative, Inc. to Increase Rates, 10 P.U.C. BULL. 1258 (September 29, 1983) is specifically **OVERRULED** on that point of law related to the parties' entitlement to a full evidentiary hearing upon modification of a stipulation by the Commission. This change in Commission policy is intended to indicate that the Commission favors and wants to encourage stipulations that are in the public interest.

3. The Commission's Special Counsel is directed to investigate the procedural changes necessary to facilitate the submission to the Commission of fully stipulated dockets. The Special Counsel is further directed to present a proposal for a procedural rule to the Commissioners as soon as possible.

[2] 4. In the interim, between the issuance of this Order and the adoption of a procedural rule governing full stipulations, the following procedures shall be followed in dockets resolved by stipulation of all parties and all issues (these procedures are intended to apply to dockets in which stipulations are submitted to the presiding examiner following the issuance of this Order):

a. the parties shall submit evidence in support of the parties' full stipulation, which may include, but is not limited to, affidavits or previously filed written testimony;

b. the presiding examiner may ask clarifying questions;

c. if the presiding examiner agrees with the stipulation, he or she will submit the stipulation, evidence in support thereof, and transcripts of hearing, if any, to the Commissioners, with a memorandum and proposed order which shall be served on all parties;

d. if the presiding examiner disagrees with the stipulation, a proposal for decision in the form of an examiner's report shall be prepared and served in accordance with Commission rules and the Administrative Procedure and Texas Register Act;

e. parties will be entitled to a full evidentiary hearing in the event the Commission rejects or modifies a full stipulation; and

f. the Commission will look with great favor upon the utility agreeing, as part of the stipulation, to extend its effective date in the event the Commission rejects or modifies the full stipulation.

The Commission further issues the following Order:

1. The application of Southwestern Bell Telephone Company for authority to offer on a trial basis, an optional calling plan (OCP) involving discounted intraLATA rates is hereby **GRANTED.**

2. The tariff sheets filed on October 20, 1989 are hereby **APPROVED.**

3. The trial period shall be uniform for SWB and all participating LECs and shall run for a period of 12 consecutive calendar months commencing at the time the first customer of SWB or a participating LEC actively begins receiving service pursuant to an OCP trial. The failure of SWB or a participating LEC to timely commence it trial shall not operate to extend the 12 calendar month period. The OCP trial period shall terminate, regardless of when it commenced, not later than 18 months following the date of this Order.

4. SWB and the participating LECs shall file quarterly tracking reports which will include, by month, the information listed on Exhibit 1 of the Stipulation, included as Attachment I of the Examiner's Report. To the extent the participating LEC does not have the technical capability to track the specific information listed on Exhibit 1, the participating LEC must provide the Commission with an explanation of such inability, accompanied by an affidavit, and, if possible, a proposal for a surrogate method to estimate the information to be tracked. The tracking information, as well as any aggregation or summary thereof, shall be filed as confidential proprietary information available only to the general counsel and Commission staff. In the event the

information is relevant to another proceeding, the general counsel and intervenors may seek to obtain the information and to challenge the confidential proprietary designation and attempt to use the information in such proceeding.

5. Acceptance of the stipulation of the parties is not intended as an endorsement or acceptance of any of the methodologies or principles which underly the stipulation.

6. All motions, applications and requests for entry of specific findings of fact and conclusions of law and any other requests for relief, whether general or specific, if not expressly granted herein are **DENIED** for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 13th day of December 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
JO CAMPBELL, COMMISSIONER

SIGNED: _____
MARTA GREYTOK, COMMISSIONER

SIGNED: _____
PAUL D. MEEK, CHAIRMAN

ATTEST:

_____
MARY ROSS McDONALD
SECRETARY OF THE COMMISSION

lsw

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR APPROVAL OF REVISIONS TO THE CHANNEL SERVICE TARIFF PURSUANT TO P.U.C. SUBST. R. 23.25(c)	§	DOCKET NO. 8971
APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR APPROVAL OF MINIMUM RATES FOR WATS, MEGACOM(R) WATS, SDN, THE AT&T TEXAS BUSINESS PLAN AND ANALOG PRIVATE LINE PURSUANT TO SUBST. R. 23.25(c)	§	DOCKET NO. 8972

December 14, 1989

Examiner's order docketing tariff applications filed by AT&T pursuant to P.U.C. SUBST. R. 23.25(c)(1) and (2) reversed on appeal to the Commission and the docket and tariff control numbers dismissed.

[1] PROCEDURE--TARIFF AMENDMENTS

Proposed tariff changes pertaining to Wide Area Telecommunications Service (WATS), analog private line services, digital private line services, and virtual private network services filed pursuant to P.U.C. SUBST. R. 23.25(c)(1) and (2) will be informally reviewed by the Commission staff to ensure compliance with the substantive rule, but will not be assigned a tariff control number and will not be reviewed by an examiner or administrative law judge under the tariff review process. The staff may require AT&T to provide support for the tariffed rates. In the event that the tariffed rates do not comport with the substantive rules, a PURA §42 proceeding may be initiated. (p. 1400)

DOCKET NO. 8971

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR APPROVAL OF REVISIONS TO THE CHANNEL SERVICE TARIFF PURSUANT TO P.U.C. SUBST. R. 23.25(C)	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET NO. 8972

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR APPROVAL OF MINIMUM RATES FOR WATS, MEGACOM(R) WATS, SDN, THE AT&T TEXAS BUSINESS PLAN AND ANALOG PRIVATE LINE PURSUANT TO P.U.C. SUBST. R. 23.25(C)	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

In emergency public meeting at its offices in Austin, Texas, the Public Utility Commission considered the appeal of AT&T Communications of the Southwest, Inc. (AT&T) from the examiner's order issued September 1, 1989.

During the meeting, the General Counsel's memorandum of August 15, 1989, was revised as follows:

1. On Page 2, Line 17, the sentence was revised to: "This relaxed procedure, however, does not mean that the staff will not review the tariff filings to ensure that the requirements of the rule are met."

2. On Page 2, Line 37, the sentence was revised to: "If the approval of T.C. No. 8884 is not forthcoming, General Counsel has no objection to requiring AT&T to file another tariff to add this offering to its compliance tariff filing and then delete the offering after Commission approval has been obtained.

The Commission further issues the following Order:

1. AT&T's appeal of the examiner's order is hereby GRANTED.

2. Docket and Tariff Control Nos. 8971 and 8972 are hereby DISMISSED.

[1] 3. The tariff sheets pertaining to Wide Area Telecommunications Service (WATS), analog private line services, digital private line services, and virtual private network services filed pursuant to P.U.C. SUBST. R. 23.25(c)(1) and (2) SHALL be handled in the following manner:

(1) The staff will review the tariff filings to ensure that the requirements of P.U.C. SUBST. R. 23.25 have been met.

(2) The staff is authorized to require AT&T to provide support for its rates, and in the event that the tariffed rates do not comport with the substantive rules, a PURA Section 42 proceeding may be initiated against AT&T.

4. This Order is deemed effective upon the date of signing.

5. All motions, applications and requests for specific findings of fact and conclusions of law, if not expressly granted herein, are denied for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 14th day of September 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
MARTA GREYTOK

SIGNED: _____
WILLIAM B. CASSIN

I respectfully dissent. I would deny the appeal for the reasons set forth in the examiner's order.

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
MARY ROSS MCDONALD
SECRETARY OF THE COMMISSION

DOCKET NO. 8971

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR APPROVAL OF REVISIONS TO THE CHANNEL SERVICE TARIFF PURSUANT TO P.U.C. SUBST. R. 23.25(C)	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS

DOCKET NO. 8972

APPLICATION OF AT&T COMMUNICATIONS OF THE SOUTHWEST, INC. FOR APPROVAL OF MINIMUM RATES FOR WATS, MEGACOM(R) WATS, SDN, THE AT&T TEXAS BUSINESS PLAN AND ANALOG PRIVATE LINE PURSUANT TO P.U.C. SUBST. R. 23.25(C)	§ § § § § §	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER AND NOTICE OF DOCKETING

I. Background

On August 1, 1989, AT&T Communications of the Southwest, Inc., (AT&T), filed two tariff applications pursuant to P.U.C. SUBST. R. 23.25(c). The tariff filings were assigned Tariff Control Nos. 8971 and 8972. After review of the filings, the undersigned tariff examiner requested comments from the general counsel and AT&T regarding: (1) whether AT&T could withdraw its tariff offering for AT&T Facilities for Other Common Carriers in its Section 23.25 tariff filing; and (2) whether Section 23.25(c)(3) applied to these tariff filings. The general counsel raised a threshold issue in her comments filed August 16, 1989: whether AT&T must receive Commission approval of tariffs for wide area telecommunications service (WATS), private line and virtual private line services.

The general counsel clarified that AT&T was not attempting to withdraw its Facilities for Other Common Carriers in Tariff No. 8972--the withdrawal of that offering is the subject of Tariff No. 8884. Further, the general counsel argued that Section 23.25(c)(3) did not apply. Subsection (c)(3) did not apply, according to the general counsel, because that subsection applies only to those services that have bench-mark prices. R. 23.25(c)(1) defines "bench-mark price" to include the charges for message telecommunications

service, 800 service, and operator service in effect on July 1, 1987. The services which are the subject of these two filings, WATS, analog private line, and digital private line, are not bench-mark priced, and therefore, R. 23.25(c)(3) does not apply.

Regarding the threshold issue of Commission approval of these filings, the general counsel's position was that Commission approval is not required for tariffs filed by AT&T regarding its WATS, private line, and virtual private line services.

According to the general counsel, the rule does not establish notice requirements for these filings and does not require that the rates be approved. Therefore, under these relaxed procedures, the staff will not review the tariff filings to ensure that the requirements of Section 23.25 are met. However, Staff may require AT&T to submit support for the rates contained in the filing. In the event that the rates do not comply with the standards set out in the rule, the general counsel envisions that a PURA Section 42 proceeding may be initiated against AT&T. AT&T filed comments on August 17, 1989, concurring with the general counsel and requesting that the examiner grant the general counsel's motion to dismiss Tariff Control Nos. 8971 and 8972.

The examiner agrees with the parties' positions regarding the applicability of Section 23.25(c)(3) and the withdrawal of the offering.

II. Procedure for Considering Threshold Issue

The examiner disagrees with the position taken by the general counsel and AT&T regarding Commission approval of the tariffs filed pursuant to Section 23.25(c). The examiner believes, at the very least, that the position taken by AT&T and the general counsel represents a departure from previous Commission practice; it is by no means clear that the Commission, in issuing its final order in Docket No. 7790, or in approving the amendments to P.U.C. SUBST. R. 23.25, authorized the procedure advocated by AT&T and general counsel; and that, as a result, the decision to utilize this new procedure is not one that the examiner should make through the tariff process.

To resolve this issue, the examiner has decided to issue this notice of docketing explaining why the examiner has concluded that Commission review and approval, modification, or rejection of AT&T's tariff applications is still required.

This notice of docketing is an order that AT&T or the general counsel may appeal to the Commission pursuant to P.U.C. PROC. R. 21.106. When this issue is resolved (either by expiration of the time period for filing an appeal, a decision by a majority of the Commissioners not to hear the appeal, or a Commission final order resolving this issue), and depending on the nature of the resolution, the application will be dismissed or returned to tariff status. If returned to tariff status, AT&T's application will be reviewed administratively, unless a dispute about the merits of the offering subsequently develops.

This procedure is not intended to cause an undue burden on AT&T or general counsel. The examiner believes that it is important to resolve the procedural issue raised by the parties. Docketing is necessary because disputed issues are not properly resolved through the tariff process. Docketing the application, therefore, is intended solely to clarify which procedure the Commission intended to approve. Procedures could then be utilized regarding future AT&T tariff applications that are consistent with such clarification.

III. Examiner's Reasoning as to Requirement that All AT&T Tariffs Must Be Reviewed and Approved, Modified or Rejected

P.U.C. SUBST. R. 23.25 is the special telephone rule applicable to regulated interexchange carriers. Recent revisions to the rule became effective on August 1, 1989. Pursuant to P.U.C. SUBST. R. 23.25(c)(2), AT&T was required to file tariffs containing minimum rates for each WATS offering and each private line offering on August 1, 1989. For analog private line service, AT&T was required to file additional information showing the access cost associated with each access-related rate element for which minimum rates are to be set. The standards for calculating minimum rates for these services are set out in R. 23.25(c)(1)(B), (C) and (D). These tariff filings were assigned Tariff Control Nos. 8971 and 8972.

[1] Although P.U.C. SUBST. R. 23.25(c)(1) or (2) do not specifically state that the Commission "shall review" AT&T's filings pursuant to P.U.C. SUBST. R. 23.25, the examiner believes that the Commission not only has the authority but also the obligation to review the Section 23.25 tariff filings in order to confirm that the standards imposed by the rule have been met by AT&T.

This requirement of review for compliance applies to <u>all</u> tariffs filed with the Commission. P.U.C. SUBST. R. 23.24(g) states: "<u>Any</u> tariff filed with the commission and found not to be in compliance with these <u>sections</u> shall be so marked and returned to the <u>utility</u> with a brief explanation of the reasons for rejection." (Underlining added.)

The use of "any" and "utility" indicates that P.U.C. SUBST. R. 23.24(g) applies to any tariffs filed at the Commission by any utility. The term "utility" as defined in those provisions includes all dominant carriers. In a final order issued December 29, 1988, in <u>Petition of the General Counsel for an Evidentiary Proceeding to Determine Market Dominance Among Interexchange Carriers</u>, Docket No. 7790, 14 P.U.C. BULL. 1703 (December 29, 1989), the Commission changed the conclusion of law proposed by the examiner in that case to specifically include "all other services," which includes WATS, private line

and virtual private network services, as a service market in which AT&T is found to be a dominant carrier. Conclusion of Law No. 17 of the order signed by the Commissioners provides:

> ATTCSW [AT&T Communications of the Southwest] is a dominant carrier as to MTS, operator services, 800 service and "all other services" in that with respect to each of these four markets, ATTCSW currently has sufficient market power to enable ATTCSW to control prices in a manner adverse to the public interest.

Thus, AT&T is a "utility" under PURA Section 3(c)(2)(B)(i) and P.U.C. SUBST. R. 23.3 for purposes of all of AT&T's service markets, and P.U.C. SUBST. R. 23.24(g) applies to all of AT&T's tariff filings.

The reference in P.U.C. SUBST. R. 23.24(g) to "sections" indicates that every tariff filed by a utility is to be reviewed for compliance with Commission rules and rejected if the tariff is not in compliance.

General counsel states that, regarding tariffs such as those at issue here, except for the fairly minimum substantive requirements of P.U.C. SUBST. R. 23.25, the Commission intended that AT&T be regulated like an interexchange carrier found to be non-dominant. However, these substantive requirements make AT&T different from non-dominant carriers in terms of the need to review and rule on its tariffs.

P.U.C. SUBST. R. 23.25 establishes standards that even AT&T's WATS, private line, and virtual private network service tariffs must meet. The rule requires that rates for services utilizing switched access must be calculated on a specific distance-sensitive basis (P.U.C. SUBST. R. 23.25(e)); the minimum rates for WATS, analog private line, and digital private line services must be above certain average costs (P.U.C. SUBST. R. 23.25(c)(1)(B) through (E). Verifying that these standards have been met may be easy or difficult, but under P.U.C. SUBST. R. 23.24(g), verification of compliance with the standards is required or the tariff must be rejected.

Thus, P.U.C SUBST. R. 23.24 applies to all tariff filings, including those filed pursuant to the "special telephone rules"--P.U.C. SUBST. R. 23.25, R. 23.26, R. 23.27, and R. 23.28. P.U.C. SUBST. R. 23.24 contains general procedural requirements which, to the extent they are not explicitly superseded by provisions in P.U.C. SUBST. R. 23.25, remain in force and effect. Sections in R. 23.24 which are not affected by the enactment of, and subsequent revision to, R. 23.25 include the sections relating to the number of copies to be filed with the Commission; the requirement that the applicant mark the tariffs for changes; and the requirement that the tariffs comply with the substantive rules. Any tariff sheet not in compliance is rejected and returned to the company.

AT&T's own tariff application indicates the company's conviction that P.U.C. SUBST. R. 23.24 applies to its tariffs except to the extent superseded by P.U.C. SUBST. R. 23.25. That application includes the designations "D," "N," "T," etc., which are required by, and meaningless without, P.U.C. SUBST. R. 23.24(e), entitled "Symbols for changes." Review of the tariff discloses AT&T's efforts to comply with other requirements of P.U.C. SUBST. R. 23.24 as well.

AT&T may be beginning to suit its actions to its argument that P.U.C. SUBST. R. 23.24 does not apply to AT&T, and that Commission review and approval of its tariffs is not required. On Thursday, August 24, 1989, AT&T attempted to file only one copy of a tariff filing, explaining that P.U.C. SUBST. R. 23.24(b)(1), which requires five copies, applies only to "regulated utilities."

P.U.C. SUBST. R. 23.24 establishes procedures that are easy to comply with, that ensure that tariff applications are reviewed for compliance, and that this review is prompt and efficient. The multiple-copy filing requirement, for example, achieves several purposes. First, it ensures that the Central Records staff and copying equipment is not tied up making copies to be distributed within the Commission. Second, under established procedures, various divisions that might be interested (such as Telephone, General Counsel, and Hearings) are given notice that AT&T has submitted a document to be included in its tariff by

receiving a copy of the filing. Under AT&T's proposed procedures, even if the staff somehow found out that AT&T had filed such a tariff but they did not receive a copy of it, they would have to go to Central Records to make one or to review the copy filed. This is an inefficient use of the Commission's scarce resources and increases the likelihood that any problems with the tariff application will not be spotted, or will be identified long after AT&T puts the tariff into effect.

Accepting the argument of general counsel that because R. 23.25(c) does not state that the Commission shall review the tariffs filed pursuant to that section therefore means that the staff does not review the tariffs for compliance and that the Commission does not approve the tariffs would result in a departure from past procedures utilized by the Commission staff, the company, and the Hearings Division.

Before the recent revisions to Section 23.25 (effective August 1, 1989), the rule did not state that the Commission shall review and approve the benchmark prices filed pursuant to Subsection 23.25(c). However, AT&T filed tariffs containing the benchmark prices pursuant to 23.25(c) on July 1, 1987, and again on July 1, 1988. In each tariff filing, the staff reviewed the tariffed rates for compliance with the substantive rule, and the examiner issued an order of approval. AT&T never disputed the procedure and in fact requested a copy of the tariffs as approved by the Commission staff. See Examiner's Attachment No. 1.

From a practical standpoint, reviewing a tariff for compliance pursuant to P.U.C. SUBST. R. 23.24(g) is an efficient first-line defense against implementation of tariffs which do not comply with the Commission rules or the Public Utility Regulatory Act. Such a review may also often eliminate problems such as lack of clarity or typographical errors. In addition, the longer the Commission waits to review a tariff for compliance with the applicable rules, the more complicated and involved a problem may become. As reflected in the Commission's order in Docket No. 7790, the Commission was concerned that AT&T might attempt effectively to raise prices in areas where AT&T faces less

competition or to engage in cross-subsidization. Difficulties in remedying these potential problems with AT&T's tariffs increase as the time period for reviewing the tariffs for compliance with the rules moves farther from the date the tariff was filed to some uncertain time in the future when a problem may be discovered by the staff, a customer, or a competitor.

A PURA Section 42 inquiry is always available when the Commission is concerned that a utility's tariffs do not comply with the applicable rules. This type of inquiry, however, is not and should not be the only avenue available to the Commission to review AT&T's or any other utility's tariffs for compliance. Correcting a problem through a docketed proceeding when a prompt, but thorough, review of the tariff through the tariff process would have cured the problem, is an inefficient use of the Commission's resources. And to wait for the Commission's General Counsel to initiate a Section 42 proceeding seems to be a very inefficient and time-consuming method to correct errors in the tariff given that R. 23.24(g) requires the review for compliance.

IV. Conclusion

As discussed in Section II of this order, these tariff applications are hereby DOCKETED for the limited purpose of resolving the disputed issue of the obligation to review AT&T's tariff filings made pursuant to P.U.C. SUBST. R. 23.25(c)(1) or (2). Once that issue is resolved, then the application will be returned to tariff status and the review completed.

SIGNED AT AUSTIN, TEXAS on this the 1ST day of September 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

Beth Bierman

BETH BIERMAN
HEARINGS EXAMINER

EXAMINER'S ATTACHMENT NO. 1

Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

Jo Campbell
Commissioner

Marta Greytok
Commissioner

TO: AT&T Communications of the Southwest, Inc.
Commission Telephone Division

DATE: July 21, 1988

RE: Tariff Control No. 8241

NOTICE OF APPROVAL OF APPLICATION AS REVISED

The proposed tariff sheets submitted as part of Tariff No. 8241 are hereby APPROVED, effective July 1, 1988, with the following exception. Section 5, 1st Revised Sheet 2, of AT&T's Channel Service Tariff, filed on July 1, 1988, is hereby REJECTED. Section 5, 1st Revised Sheet 2, of that tariff, filed on July 19, 1988, is hereby APPROVED effective July 1, 1988.

Elizabeth Hagan Drews

ELIZABETH HAGAN DREWS
ADMINISTRATIVE LAW JUDGE
HEARINGS DIVISION -- TARIFFS

Public Utility Commission of Texas

Memorandum

1st Revision
7-19-88

TO: Telephone

FROM: Central Records -- Tariffs

Telephone Control No. 8241 Effective Date: 7-31-88

Utility Name: AT&T Subs. R. 23.25 (7-1-88)

Please return recommendations by _____

TO: Mary Beth Stewart Date: 7/20/88

FROM: David Featherston Company: AT&T

This filing has been reviewed and it is recommended that the filing be:

- [x] Approved as filed DEF
- [ ] Approved - with listed changes
- [ ] Rejected
- [ ] Docketed
- [ ] Suspend

Comments: I recommend that this application be approved as revised on 7/19/88.

DEF

RECEIVED
1988 JUL 20 PM 4:42
PUBLIC UTILITY COMMISSION
FILING CLERK

R.H. Erkel, Jr.
External Affairs Director

4414 Spicewood Springs Road
Suite 600
Austin, Texas 78759
(512) 343-5304

July 1, 1988

Mr. Phillip Holder
Secretary and Director of Hearings
Public Utility Commission of Texas
7800 Shoal Creek Blvd., Suite 400N
Austin, Texas 78759

RE: AT&T Tariff Filing in accordance with Substantive Rule 23.25

Dear Mr. Holder:

Enclosed for filing is an original and 5 copies of tariff changes reflecting the maximum and minimum rates AT&T may charge for the following AT&T services: MTS, WATS, Custom Network Service, Channel Service, Facilities for Other Common Carriers, Dataphone® Digital Service and 1.544 Mbps Digital Service. Access cost information for each local channel rate element for analog and private line service is enclosed. In accordance with PUC Substantive Rule 23.25, the enclosed tariffs become effective on this date.

Please stamp one set of the tariff pages as approved by the PUC effective this date and return it in the enclosed self-addressed envelope.

Yours very truly,

R. H. Erkel, Jr.
External Affairs Director

enclosures

®Registered Service Mark of AT&T1412

Public Utility Commission of Texas

7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

Dennis L. Thomas
Chairman

Peggy Rosson
Commissioner

Jo Campbell
Commissioner

TO: Mr. R.H. Erkel, Jr.
Vice President - Texas
AT & T Communications of the Southwest, Inc.
4412 Apicewood Springs Road
Austin, Texas 78759

RE: Tariff Control No. 7564

DATE: July 23, 1987

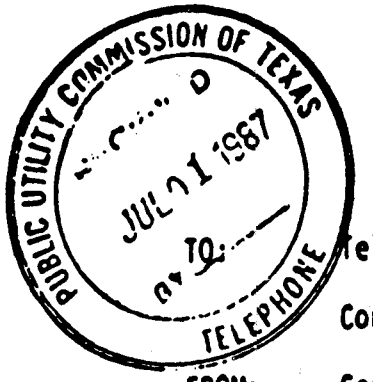
NOTICE OF APPROVAL

The proposed tariff sheets submitted as the above-referenced filing are APPROVED, effective July 1, 1987.

Elizabeth Hagan Drews
ELIZABETH HAGAN DREWS
ADMINISTRATIVE LAW JUDGE
HEARINGS DIVISION

EHD:mbs

Public Utility Commission of Texas



Memorandum

TO: Telephone
Consumer Affairs

FROM: Central Records--Tariffs

Telephone Control No. 7564 " Effective Date: " 8-5-87

Utility Name: AT+T Sw. R. 23.25

Please return recommendations by 7-30-87

TO: Date: 7/23/87

FROM: Company: _____

This filing has been reviewed and it is recommended that the filing be:

☑ Approved as filed ☐ Docketed

☐ Rejected ☐ Approved - with lis

Comment: _____

7564

R H. Erkel, Jr.
Vice President - Texas

4412 Spicewood Springs Road
Suite 600
Austin, Texas 78759
(512) 343-5304

July 1, 1987

Mr. Phillip Holder
Secretary and Director of Hearings
Public Utility Commission of Texas
7800 Shoal Creek Blvd., Suite 400N
Austin, TX 78759

RE: AT&T Tariff filing in accordance with Substantive Rule 23.25

Dear Mr. Holder:

Enclosed for filing is an original and 5 copies of AT&T's bench-mark tariffs and current price schedules for the following AT&T services: MTS, WATS, Custom Network Service, Channel Service, Facilities for Other Common Carriers, Dataphone® Digital Service and 1.544 Mbps Digital Service. In accordance with PUC Substantive Rule 23.25, the enclosed tariffs become effective on this date. The bench-mark rates and the rates reflected on the current price schedules for all AT&T services are the same rates which AT&T charged for these services prior to this date.

This filing includes tariff pages which have been amended to add new definitions necessitated by the rule and a cover page listing all revised tariff pages filed today. Access cost information for each local channel rate element for analog private line service is also enclosed.

Please stamp one set of the tariff pages as approved by the PUC effective this date and return it in the enclosed self-addressed envelope.

Yours very truly,

Stephen L. Kadlec

R.H. Erkel, Jr.
Vice President - Texas

enclosures

® Registered Service Mark of AT&T

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO INCREASE INTERIM FIXED FUEL FACTORS	§ § § §	DOCKET NO. 8280

April 6, 1989

A good cause exception to P.U.C. SUBST. R. 23.23(b)(2)(c) was granted to permit Southwestern Electric Power Company (SWEPCO) to increase its fixed fuel factors outside of a rate case, fuel reconciliation proceeding, or interim fuel proceeding pursuant to P.U.C. SUBST. R. 23.23(b)(2)(E). Motion for rehearing overruled by operation of law May 6, 1989.

[1] JURISDICTION--GENERAL POWERS
PROCEDURE--FUEL PROCEEDINGS
RATEMAKING--COST OF SERVICE--FUEL AND PURCHASED POWER

P.U.C. SUBST. R. 23.23(b)(2)(B) does not address non-emergency increases to a utility's fixed fuel factors outside of a rate case or fuel reconciliation proceeding. PURA Section 43(g) does not limit the Commission's jurisdiction to grant increases in fixed fuel factors only to rate cases, fuel reconciliations or emergency fuel proceedings. Although a provision specifically allowing for increases in fuel factors in non-emergency interim fuel proceedings was not included in the fuel rule, the substantive rule cannot limit the Commission's jurisdiction under PURA. (p. 1423)

[2] The Commission has the authority to grant a good cause exception to the fuel rule, and authorize increases in fixed fuel factors outside the scope of a rate case, fuel reconciliation proceeding or emergency interim fuel proceeding. (p. 1424)

DOCKET NO. 8280

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO INCREASE INTERIM FIXED FUEL FACTORS	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Procedural History

On July 29, 1988, Southwestern Electric Power Company (SWEPCO) filed a petition with the Commission for authority to increase interim fixed fuel factors. SWEPCO stated that the increase was necessary because as of June 30, 1988, SWEPCO had a fuel cost under-recovery in its Texas retail jurisdiction of $6,232,430, excluding interest of $361,541. If the fuel factors remained unchanged, SWEPCO projected that it would under-recover fuel and purchased power expenses by approximately $10,114,168, excluding interest, for the period July 1988 through August 1989. SWEPCO stated that the under-recovery resulted from adjustments to the coal inventory, changes in fuel prices, changes in allocated Texas KWH sales and changes in the generation mix.

SWEPCO did not request a reconciliation of fuel costs, but instead requested a good cause exception to P.U.C. SUBST. R. 23.23 (The Fuel Rule) pursuant to P.U.C. SUBST. R. 23.2. SWEPCO acknowledged in its petition that the request was "unique" because it was the first request filed to increase a fixed fuel factor subsequent to the passage of PURA Section 43(g) and because SWEPCO was not requesting a fuel reconciliation. SWEPCO proposed to discontinue accruing interest on the entire under-recovery balance ending June 1988, $6,593,971. No other party to this proceeding requested that a fuel reconciliation take place pursuant to P.U.C. SUBST. R. 23.23(b)(2)(H).

The first prehearing conference in this docket was convened on August 19, 1988. Appearances were entered by SWEPCO, Texas Industrial Energy Consumers (TIEC), Lone Star Steel Company (Lone Star), the Office of Public Utility Counsel (OPUC) and the Commission's General Counsel in the public interest. Motions to intervene by TIEC and the OPUC were granted. Lone Star's subsequent motion to intervene was also granted by the examiner.

Due to the uniqueness of SWEPCO's petition, the examiner requested that the parties file briefs regarding the authority of the Commission to grant the relief sought by SWEPCO in the manner requested. In addition, the General Counsel requested the opportunity to brief the issue of appropriate notice in this docket and that issue was included in the briefs. The examiner proposed an expedited briefing schedule. However, SWEPCO and the General Counsel requested additional time to submit the briefs and the resulting schedule and issues to be briefed were set out in Examiner's Order No. 2. Discovery was allowed to proceed immediately. A second prehearing conference was scheduled for September 30, 1988.

On August 29, 1988, SWEPCO filed an appeal of Examiner's Order No. 2, requesting that the Commissioners determine directly whether the Commission had the authority to grant the relief in the manner requested by SWEPCO. The Commissioners did not vote to hear the appeal and the appeal was therefore overruled by operation of law.

On September 30, 1988, the second prehearing conference was convened in this docket. At the conference, the examiner informed the parties that a procedural schedule and a date for the hearing on the merits would be established. The issues briefed by the parties were implicitly carried forward to the Examiner's Report, with any objections being raised in the form of exceptions to the report.

In its application, SWEPCO stated its intent to publish notice of the application for four consecutive weeks and to provide notice to the governing bodies of the municipalities having original jurisdiction. The examiner agreed with the General Counsel that individual notice should be also required in this docket and therefore ordered SWEPCO to provide individual customer notice pursuant to P.U.C. PROC. R. 21.22(b) and 21.25(a)(3), and to provide proof of

publication as soon as possible. SWEPCO indicated that notice could be completed by October 22, 1988. The deadline for motions to intervene was set at October 28, 1988, and the hearing on the merits was scheduled for November 29, 1988.

During the conference, SWEPCO withdrew its request for interim relief after a discussion regarding the standard for granting interim relief under PURA Section 43(g).

The hearing on the merits was convened as scheduled with SWEPCO, Lone Star, TIEC, OPUC and the Commission General Counsel making appearances.

The parties informed the examiner that SWEPCO and the General Counsel had entered into a stipulation regarding the fixed fuel factors for this docket. OPUC, TIEC and Lone Star did not sign the stipulation. The application, testimony, supplemental testimony of the staff, publishers' affidavits and the stipulation were admitted into evidence without objection. Neither OPUC, TIEC nor Lone Star offered any direct testimony to challenge or dispute the stipulation. Lone Star cross-examined staff witness Brian Almon regarding the extent to which Mr. Almon's recommendation was based upon a sealed exhibit, Staff Exhibit 1-A. The hearing was adjourned that same day.

On December 7, 1988, the General Counsel filed a Motion to Withdraw Staff Exhibit 1-A. Lone Star filed a Response in Opposition. After the examiner ordered General Counsel and Lone Star to file briefs on the legal basis for withdrawal or prohibiting withdrawal of the exhibit, the General Counsel filed a motion on December 20, 1988, to withdraw its motion to withdraw staff exhibit 1-A. Thereafter, the examiner rescinded the order requiring briefs on the issue.

Several written protests from SWEPCO customers protesting the petition for fuel factor increases were filed with the Commission.

II. Jurisdiction

The Commission has jurisdiction over this application pursuant to Sections 16(a) and 43(g) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1988).

III. Discussion

A. Introduction

The intervenors in this docket, TIEC, OPUC and Lone Star, oppose the stipulation on similar grounds. OPUC questioned the procedural basis for granting the requested relief outside of a rate case or fuel reconciliation, and declined to sign the stipulation because, according to Ms. Ottmers, OPUC will not sign a partial stipulation as a matter of policy. Because no contravening evidence to the stipulation was to be presented by any party, Ms. Ottmers did not object to the stipulation on the grounds that the stipulation was not supported. (Tr. at 32).

TIEC and Lone Star opposed the stipulation because they believed that the proceeding in this docket was outside the scope of P.U.C. SUBST. R. 23.23. In other words, because the substantive rule does not provide for non-emergency increases in fixed fuel factors outside of a rate case or fuel reconciliation, TIEC and Lone Star argued that the Commission does not have the authority to grant a good cause exception to the mandatory terms of that rule. Even if the Commission had the authority to grant the exception, Lone Star argued that there was no justification for granting the good cause exception requested by SWEPCO.

The General Counsel and SWEPCO argued that the Commission has the authority to grant the good cause exception and that good cause exists for doing so. These issues will be discussed below in Section III. B. of this report. The stipulation itself will be discussed in Section III. C.

B. Statutory and administrative provisions
Presentation of the threshold issue

PURA Section 43(g) is the statutory provision regarding the setting of a utility's fuel factors by the Commission. PURA Section 43(g) requires that rates and tariffs established by the Commission not allow automatic adjustment and pass-through of changes in fuel costs to the utility's customers. Section 43(g) also requires that the Commission convene a public hearing and issue an order before any revision to a utility's billing allowing recovery of additional fuel costs.

The Commission has implemented P.U.C. SUBST. R. 23.23, the Fuel Rule, to carry out the jurisdictional grant of PURA Section 43(g). The substantive rule is not jurisdictional; it neither confers jurisdiction upon the Commission nor purports to deprive the Commission of jurisdiction.

P.U.C. SUBST. R. 23.23(b)(2)(B) provides that known or reasonably predictable fuel costs shall be determined during one of four different proceedings: (1) in a rate case proceeding; (2) in a fuel reconciliation proceeding; or (3) in an interim fuel proceeding pursuant to either P.U.C.SUBST. R. 23.23(b)(2)(D) or (E). Section 23.23(b)(2)(C) repeats the language regarding determination of fuel costs through fixed fuel factors during one of the four listed proceedings.

This docket is not a rate case, and no party to this proceeding has requested a fuel reconciliation proceeding pursuant to P.U.C. SUBST. R. 23.23(b)(2)(H). Nor does SWEPCO's request for an increase in fuel factors fit within the interim fuel proceedings in Subsections (D) or (E) of the Fuel Rule.

Subsection (D) of the Fuel Rule provides for the lowering of fuel factors--not an issue in this docket. Subsection (E) provides that emergency increases may be granted if the utility has materially under-recovered known or reasonably predictable fuel costs resulting from fuel curtailments, equipment

failure, strikes, embargoes, sanctions or other reasonably unforeseeable circumstances. SWEPCO readily admits in its application that the under-recovery sought to be recovered in this docket does not constitute an emergency request within Subsection (E) of the Fuel Rule. There is no subsection within the Fuel Rule which addresses non-emergency increases to a utility's fixed fuel factor--SWEPCO's requested relief in this docket.

SWEPCO is therefore requesting a good cause exception under P.U.C. SUBST. R. 23.2 to the procedural requirement in P.U.C. SUBST. R. 23.23(b)(2)(C) that establishment of a fuel factor must be accomplished within either a rate case, fuel reconciliation or an interim fuel proceeding under Subsections (D) or (E).

The threshold issue in this case is whether the Commission has the authority to grant the requested good cause exception to the Fuel Rule given the apparently mandatory language of P.U.C. SUBST. R. 23.23. The Commission considered this issue in Application of West Texas Utilities for Authority to Increase Fixed Fuel Factors, Docket No. 8328, during the January 17, 1989, final order meeting. The Commission unanimously adopted the Examiner's Report in that docket, which concluded that the Commission had the authority to make a good cause exception to the Fuel Rule and recommended that such an exception be approved.

In Docket No. 8328, the pending expiration of a low-cost fuel contract between WTU and Phillips 66 Natural Gas Company would result in substantial under-recoveries which would ultimately reach the level of materiality in 1989. SWEPCO's request for an increase in fuel factors in this docket, however, does not hinge upon the pending expiration of a fuel contract. SWEPCO's request is based upon an adjustment to the coal inventory following an aerial survey, and changes in fuel prices, allocated Texas KWH sales and generation mix.

1. Whether the Commission has the authority to grant the requested good cause exception.

Intervenors TIEC and Lone Star argue in their post-hearing briefs that the language of P.U.C. SUBST. R. 23.23(b)(2)(B) and (C) is mandatory, and therefore the Commission is bound to the terms and conditions of the Fuel Rule. In short, they contend that the use of the word "shall" in those subsections prohibits the Commission from granting the requested good cause exception. SWEPCO's position is that the Commission has the authority to grant the requested exception. The examiner concurs.

[1] PURA Section 43(g) does not in any manner limit the Commission's jurisdiction to grant increases in fixed fuel factors only to rate cases, fuel reconciliations or emergency fuel proceedings. Although a provision specifically referring to increases in fuel factors in non-emergency situations was not included in the Fuel Rule, the substantive rule cannot limit the Commission's jurisdiction under PURA. See P.U.C. SUBST. R. 23.2.

The Commission does not have to have a specific provision governing every possible circumstance in order to exercise the statutory grant of jurisdiction found in PURA. See Patchogue Nursing Center v. Bowen, 797 F. 2d 1137 (2d Cir. 1986); and SEC v. Chenery Corp., 32 U.S. 194, 201-203, 67 S.Ct 1575, 1579-1580 (1947).

And while the Commission should in general follow its own properly noticed and promulgated rules to effect the comprehensive regulatory scheme established in the Commission's substantive rules, the Commission has acknowledged that it has the authority to grant exceptions to those rules for good cause. (P.U.C. SUBST. R. 23.2).

The intervenors' argument, that the use of the term "shall" prohibits the Commission from granting the exception, would deprive the Commission of the very administrative flexibility it must possess, and does possess with the good

cause exception provision, to carry out its statutory duty to regulate the public utilities of this state. SEC v. Chenery Corp., 32 U.S. 94, 201-203, 67 S.Ct. 1575, 1579-1580 (1947). Given the frequent use of the term "shall" in the substantive rules, such a strict interpretation of the rules would be contrary to the purpose of the regulation--to assure that rates, operations and services are just and reasonable to the consumer and to the utility, and in the case of fuel costs, that the utility be allowed to recover its known or reasonably predictable fuel costs through fixed fuel factors.

[2] For the reasons considered above, the examiner finds that the Commission has the authority to grant the good cause exception pursuant to P.U.C. SUBST. R. 23.2.

2. Good Cause Exception to P.U.C. SUBST. R. 23.23

As of June 30, 1988, SWEPCO reported a fuel cost under-recovery balance for its Texas retail jurisdiction of approximately $6,232,430 excluding interest; with interest of $361,541 included, the total under-recovery was $6,593,971. SWEPCO's under-recovery would become material at approximately $4,320,865. If its fuel factors remained unchanged, SWEPCO predicted that it would continue to under-recover its fuel and purchased power expenses by approximately $10,114,168, excluding interest, for the period July 1988 through August 1989. The projected rate-year under-recovery and the current under-recovery as of June 30, 1988, would total approximately $16,708,139. SWEPCO is definitely in a critical under-recovery position.

The General Counsel and SWEPCO contend that justification for granting the requested good cause exception pursuant to P.U.C. SUBST. R. 23.2 is present in this docket. The examiner concurs for the reasons stated below.

The term "good cause" is not defined in the Commission's rules. The courts have held that the term has no precise meaning but must depend on the

circumstances of each case. See Snowden v. Republic Supply Co., 239 S.W.2d 201, 204 (Tex. Civ. App.--Dallas 1951, writ ref'd n.r.e.) and Hawkins v. Safety Casualty Co., 146 Tex. 381, 207 S.W.2d 370, 372 (1948).

The circumstances of this case justify the granting of a good cause exception to the Fuel Rule. SWEPCO has amassed a significant under-recovery balance and will continue to under-recover if the present fuel factors remain unchanged. The staff indicated its belief that its review of SWEPCO's application was sufficient to support the recommendation in the stipulation. (Tr. at 44). Granting the exception in this case would avoid interest charges and the build-up of future under-recoveries that might have to be recovered at the time of SWEPCO's next general rate increase or fuel reconciliation proceeding, thereby reducing adverse consequences to SWEPCO's customers. Further, the interests of the parties in this case and the interest of SWEPCO's customers will be fully protected because SWEPCO's fuel factors will be subjected to review in its SWEPCO's next rate case or fuel reconciliation. And if fuel costs should decline, SWEPCO is still required under the rules to file for a fuel factor decrease.

3. Proposed rule as more appropriate forum

Lone Star and TIEC have argued that the question of whether the Commission may grant the relief in the manner requested by SWEPCO in this docket is more appropriately undertaken in conjunction with a rulemaking proceeding. The proposed rulemaking involving P.U.C SUBST. R. 23.23 which would have provided for non-emergency increases in fuel factors outside a rate case or fuel reconciliation was withdrawn by operation of law pursuant to Section 5(b) of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1988).

C. The Partial Stipulation

1. Standard for Adopting the Partial Stipulation

This proceeding did not result in a contested stipulation--no party presented direct testimony in opposition to the stipulation presented by SWEPCO and the General Counsel, although Lone Star did cross-examine a staff witness to determine the factual basis for his recommendation in this docket. The Commission has determined previously that even if not all the parties in a case signed the proposed stipulation, it was reasonable for the Commission to adopt the partial stipulation if certain criteria were met. Application of El Paso Electric Company for Authority to Change Rates and Application of El Paso Electric Company for Review of the Sale and Lease Back of Palo Verde Nuclear Generating Station Unit No. 2, Docket Nos. 7460 and 7172, (March 22, 1988). The five criteria will be considered in turn below.

(a) *Notice to the parties in opposition to the proposed stipulation that the proposed stipulation may be considered by the Commission, and an opportunity to be heard on their reasons for opposing the stipulation*

All parties who did not sign the stipulation had notice that a stipulation would be presented to the examiner during the hearing on the merits and had the opportunity to present their reasons for opposing the stipulation. (Tr. at 32, 33).

(b) *The matters contained in the stipulation are supported by a preponderance of the credible evidence*

For the reasons set forth in section III C. 2. of this report, the stipulation is supported by a preponderance of the credible evidence.

(c) *The stipulation is in accordance with applicable law*

For the reasons stated within Section III. B. of this report, the proposed stipulation is in accordance with the applicable law. Lone Star argued in its reply brief that if SWEPCO's request in this docket had to rely on the Commission granting a good cause exception to the Fuel Rule, then the stipulation was not in accordance with the applicable law. Because the Commission has the jurisdiction and authority to grant the exception, the examiner finds Lone Star's argument unsupportable.

(d) *The stipulation results in just and reasonable rates*

Because this docket involves fixed fuel factors, and not rates under PURA Section 43(a), the appropriate standard to apply herein would be whether the stipulated fixed fuel factors will allow SWEPCO to recover known or reasonably predictable fuel costs.

The evidence presented by SWEPCO and the General Counsel during the hearing on the merits supports the stipulated fixed fuel factors. The stipulation and the supporting evidence are discussed in section III. C. 2. below.

(e) *The results of the stipulation are in the public interest, including the interests of those customers represented by parties in opposition to the stipulation*

The public interest favors settlements in contested cases for many reasons, several of which were enumerated by the Commission in Docket Nos. 7460 and 7172:

(1) settlements usually reduce ratepayer and taxpayer expense of resolving the issues presented;

(2) settlements usually conserve the resources of the Commission;

(3) settlements allow the the parties to the settlements to avoid the risk that a litigated resolution of the issues in dispute may produce results that are unacceptable to such parties; and

(4) settlements promote peaceful relations among the parties.

The examiner finds that all of the above-enumerated reasons for favoring settlements are present in this docket. All parties have been able to reduce resolution costs in this proceeding because this proceeding has taken less time to resolve than a full reconciliation proceeding. The staff has been able to resolve the matters in SWEPCO's application with a minimum expenditure of resources. The parties have avoided unfavorable outcomes which in theory could have occurred if any one single party had received the full relief it had requested.

It is in the interest of all parties to this proceeding and to SWEPCO's customers to reduce under-recoveries of fuel costs and therefore to prevent the accrual of interest charges in favor of the utility. The customers will be protected by the cessation of accrual of interest on under-recoveries existing as of June 30, 1988. Finally, the rights of the parties in this case will be protected in SWEPCO's next fuel reconciliation case. Therefore, the examiner finds that the standard for adopting the partial stipulation has been met in this case.

2. Stipulated fuel factors and line loss multipliers.

P.U.C. SUBST. R. 23.23(b)(2)(C) provides that the utility shall recover its known-or-reasonably-predictable fuel costs through a fixed fuel factor. In determining these fuel costs, the Commission considers all conditions or events which will impact the utility's fuel-related cost of supplying electricity to its ratepayers during the period the rates will be in effect. These conditions or events include generation mix and efficiency, the cost of fuel used to produce the utility's generation, purchased power costs, hydro generation and other costs or revenues associated with generated or purchased power as approved by the Commission. P.U.C. SUBST. R. 23.23(b)(2)(B)(ii).

The fuel factor is determined by dividing the utility's known-or-reasonably-predictable fuel costs (as defined in P.U.C. SUBST. R. 23.23(b)(2)(B)) by the kWh sales during the period in which the fuel factor will be in effect. The fuel factor is designed to account for seasonal differences in fuel costs, system losses, and line losses due to differing voltage levels of service.

Staff witness Eugene Bradford reviewed SWEPCO's methodology for calculating its proposed fixed fuel factor and accounting for seasonal differences in fuel costs, system losses, and line losses due to differing voltage levels of service. Mr. Bradford recommended adoption of SWEPCO's methodology in this docket because the same methodology was used in SWEPCO's previous fuel cases and it complied with the requirements of P.U.C. SUBST. R. 23.23 for calculating fixed fuel factors.

Staff witness Brian Almon reviewed SWEPCO's forecasted gas, coal, lignite, and starter fuel prices and purcahsed power costs for the rate year, September 1988 through August 1989. Mr. Almon made adjustments to spot gas prices, the contract coal prices and the lignite prices. No adjustments were made to SWEPCO's projections for dedicated gas, starter fuel, spot coal or purchased power. The staff accepted SWEPCO's forecast of the utility's kWh sales during the rate year.

The stipulation presents the agreement of SWEPCO and the General Counsel to fixed fuel factors and line loss multipliers. The staff proposed a reduction from the $284,585,399 in total Company on-system rate-year reconcilable fuel cost requested by SWEPCO to a staff total Company rate-year reconcilable fuel cost of $280,860,800, a 1.3 percent difference. For the reader's convenience, the stipulation is appended to this report as Examiner's Attachment No. 1.

The parties have requested that the proposed factors and line loss multipliers be placed in effect for bills rendered on and after January 1989, or with the first monthly billing cycle after the entry of a final order by the Commission. The application of these new fixed fuel factors is consistent with

the practice approved by the Commission in Docket Nos. 6611 and 7635, SWEPCO's previous fuel cases. This practice is also consistent with the manner in which fuel costs and fuel cost recoveries are recorded in SWEPCO's books.

SWEPCO and the General Counsel stipulated to the following interim tri-annual fixed fuel factors. These factors are based upon a $122,353,382 rate-year known-or-reasonably-predictable retail reconcilable fuel cost and are estimated to increase retail fuel revenues by approximately $6.5 million in the rate year or by 5.6 percent.

Stipulated fixed fuel factors

Billing months	Stipulated interim fixed fuel factors per KWH
Jan.--April	$0.01978
May--August	$0.02203
Sept.--Dec.	$0.01932

SWEPCO has used tri-annual fixed fuel factors since its last fuel reconciliation in Docket No. 6611. The stipulated factors continue the use of tri-annual factors.

SWEPCO and the General Counsel proposed that the following line loss multipliers be used to adjust the fixed fuel factors to account for line losses:

Line Loss Multipliers

Transmission	
138 KV	.95659
69 KV	.96619
Substation*	.97325
Primary	.98693
Secondary	1.02206

*Applicable to Primary Service supplied from the substation bus for customers served on LLP rate schedule.

The stipulated fuel factors are derived from and supported by the evidence as represented in the schedules and exhibits attached to the stipulation. See Examiner's Attachment No. 1. Staff witness Waldon Boecker testified that he believed that the staff had done a sufficient job of reviewing the proposal in order to support the recommendation in the stipulation. Mr. Boecker further stated that the performance projected by SWEPCO and the staff is "within the range" of reasonable efficiency for the purposes of setting a fuel factor. (Tr. at 45-47). The stipulated fuel factors and line loss multipliers are reasonable and should be approved.

The examiner concurs with the General Counsel and SWEPCO that the stipulation is reasonable and in the public interest. Therefore the examiner recommends that the Commission adopt the stipulation of SWEPCO and the General Counsel as its decision in this docket.

IV. Findings of Fact and Conclusions of Law

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

A. Findings of Fact

1. On July 29, 1988, SWEPCO filed a petition to increase its interim fixed fuel factors.

2. The first prehearing conference was convened on August 19, 1988.

3. Intervenor status was granted to OPUC, TIEC and Lone Star Steel.

4. SWEPCO published notice of its application for four consecutive weeks in newspapers of general circulation in the counties served by SWEPCO, provided notice to the governing bodies of the municipalities which retained original jurisdiction, and provided individual notice to customers.

5. The hearing on the merits was convened on November 29, 1988, and adjourned that same day.

6. SWEPCO and the General Counsel reached an agreement resolving all disputed issues.

7. OPUC, TIEC, and Lone Star Steel did not sign the stipulation.

8. As of June 30, 1988, SWEPCO reported a fuel cost under-recovery balance for its Texas retail jurisdiction of approximately $6,232,430 excluding interest; with interest of $361,541 included, the total under-recovery was $6,593,971.

9. SWEPCO's level of materiality is approximately $4,320,865.

10. If its fuel factors remained unchanged, SWEPCO predicted that it would continue to under-recover its fuel and purchased power expenses by approximately $10,114,168, excluding interest, for the period July 1988 through August 1989.

11. The projected rate-year under-recovery and the current under-recovery as of June 30, 1988, would total approximately $16,708,139.

12. Granting the good cause exception requested in this docket would avoid interest charges and the build-up of future under-recoveries that might have to be recovered at the time of SWEPCO's next general rate increase or fuel reconciliation proceeding, thereby reducing adverse consequences to SWEPCO's customers.

13. SWEPCO's fuel factors will be subject to review in its SWEPCO's next rate case or fuel reconciliation.

14. All parties who did not sign the stipulation had notice that a stipulation would be presented to the examiner during the hearing on the merits and had the opportunity to present their reasons for opposing the stipulation.

15. For the reasons set forth in section III C. 2. of this report, the stipulation is supported by a preponderance of the credible evidence.

16. For the reasons stated within Section III. B. of this report, the proposed stipulation is in accordance with the applicable law.

17. The appropriate standard to apply to determine whether the stipulation results in just and reasonable rates is whether the stipulated fixed fuel factors will allow SWEPCO to recover known or reasonably predictable fuel costs.

18. The evidence presented by SWEPCO and the General Counsel during the hearing on the merits, and discussed in section III. C. 2. of this report, supports the stipulated fixed fuel factors.

19. The results of the stipulation are in the public interest, including the interests of those customers represented by parties in opposition to the stipulation.

20. The staff proposed a reduction from the $284,585,399 in total Company on-system rate-year reconcilable fuel cost requested by SWEPCO to a staff total Company rate-year reconcilable fuel cost of $280,860,800, a 1.3 percent difference.

21. The stipulated fuel factors are based upon a $122,353,382 rate-year known-or-reasonably-predictable retail reconcilable fuel cost and are estimated to increase retail fuel revenues by approximately $6.5 million in the rate year or by 5.6 percent.

22. SWEPCO and the General Counsel stipulated to the following interim fixed fuel factors:

Billing months	Stipulated interim fixed fuel factors per KWH
Jan.--April	$0.01978
May--August	$0.02203
Sept.--Dec.	$0.01932

23. SWEPCO and the General Counsel proposed that the following line loss multipliers be used to adjust the fixed fuel factors to account for line losses:

Transmission	
138 KV	.95659
69 KV	.96619
Substation*	.97325
Primary	.98693
Secondary	1.02206

*Applicable to Primary Service supplied from the substation bus for customers served on LLP rate schedule.

24. The interim fixed fuel factors stipulated to by the General Counsel and SWEPCO are reasonable and should be approved.

25. The line loss multipliers proposed by SWEPCO and the General Counsel are reasonable and should be approved.

B. Conclusions of Law

1. SWEPCO is a utility as that term is defined in Section 3(c) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1988).

2. The Commission has jurisdiction over this petition under Sections 16(a) and 43(g) of PURA.

3. SWEPCO provided notice of this petition as ordered by the examiner and in compliance with P.U.C. PROC. R. 21.25.

4. Under P.U.C. PROC. R. 23.2, SWEPCO has shown good cause for an exception to the procedural requirement in P.U.C. SUBST. R. 23.23(b)(2)(C) that establishment of a fuel factor must be accomplished within either a rate case, fuel reconciliation or an interim fuel proceeding under Subsections (D) or (E).

5. The standard for adopting partial stipulations as set forth in Application of El Paso Electric Company for Authority to Change Rates and Application of El Paso Electric Company for Review of the Sale and Lease Back of Palo Verde Nuclear Generating Station Unit No. 2, Docket Nos. 7460 and 7172, (March 22, 1988), has been met in this case.

6. The interim fixed fuel factors stipulated by SWEPCO and the General Counsel and recommended by this report are just and reasonable; are not unreasonably preferential, prejudicial, or discriminatory; and are sufficient and equitable, satisfying the requirements of Section 38 of PURA.

7. The stipulated fixed fuel factors were calculated in a manner consistent with past Commission practice and in a proceeding consistent with the intent of PURA Section 43(g).

8. The interim fixed fuel factors stipulated by SWEPCO and the General Counsel are subject to review by the Commission in a reconciliation proceeding or rate case under the provisions of PURA Section 43(g) and P.U.C. SUBST. R. 23.23 (b)(2)(B).

Respectfully submitted,

Beth Bierman

BETH BIERMAN
HEARINGS EXAMINER

APPROVED on this the 16th day of March 1989.

Phillip A. Holder

PHILLIP A. HOLDER
DIRECTOR OF HEARINGS

DOCKET NO. 8280

PETITION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR ORDER TO INCREASE INTERIM FIXED FUEL FACTORS	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS

STIPULATION AND MOTION FOR APPROVAL THEREOF

WHEREAS, on July 29, 1988 Southwestern Electric Power Company (SWEPCO) filed with the Public Utility Commission of Texas (Commission) a Petition for an Order to Increase its Interim Fixed Fuel Factors, in which SWEPCO sought an order of the Commission ordering that SWEPCO be permitted to increase its fuel factors;

WHEREAS, SWEPCO proposed new interim fixed fuel factors which were calculated to reflect known or reasonably predictable fuel costs for the period September 1988 through August 1989, and by the setting of these factors SWEPCO proposed to increase the interim fixed fuel factors currently set, with the result that SWEPCO estimated its retail fuel revenues would increase by approximately $8.1 million or a 7.02 percent increase in total retail fuel revenues for the period September 1988 through August 1989 due to changes in fuel costs; and

WHEREAS, the Staff of the Public Utility Commission (Staff) proposed adjustments which resulted in a reduction from the $284,585,399 in total Company on-system rate year reconcilable fuel cost requested by SWEPCO to a Staff total Company rate year reconcilable fuel cost of $280,860,800, a 1.3% difference from the SWEPCO proposed fuel cost;

SWEPCO/STAFF S. EX NO. 1 11/29/88

WHEREAS, the Office of Public Utility Counsel (OPC), Texas Industrial Energy Consumers (TIEC) and Lone Star Steel Company (LSS) moved to intervene, and were granted intervenor status;

WHEREAS, SWEPCO, OPC, TIEC, LSS and Staff have met together and SWEPCO and Staff have identified areas of agreement sufficient in number to permit this matter to be resolved upon a stipulated basis which is set forth herein subject to the approval of the Commission, and

WHEREAS, SWEPCO and the Staff believe settlement of this docket upon a stipulated basis is reasonable and will result in a disposition without the necessity of lengthy hearings; and

WHEREAS, SWEPCO and the Staff have proposed interim fixed fuel factors to be in effect for bills rendered on and after January 1989 or with the first monthly billing cycle after the entry of a final order to recover SWEPCO's known or reasonably predictable reconcilable fuel costs as follows:

Billing Months	Fuel Factor
Jan., Feb., Mar., Apr.	$0.01978
May, Jun., Jul., Aug.	$0.02203
Sep., Oct., Nov., Dec.	$0.01932

and such factors are agreed by SWEPCO and the Staff as reasonable and in the public interest; and

WHEREAS, SWEPCO and the Staff agree that the following line loss multipliers should be used to adjust the fuel factors indicated above to account for line losses:

Transmission	
138 KV	.95659
69 KV	.96619
Substation*	.97325
Primary	.98693
Secondary	1.02206

*Applicable to Primary Service supplied from the substation bus for customers served on LLP rate schedule

and WHEREAS, the line loss multipliers are reasonable and in the public interest;

NOW THEREFORE, SWEPCO and the Staff, through the undersigned representatives, agree and stipulate as follows:

I.

SWEPCO and the Staff joining in the agreement hereby introduce the original Petition and Exhibits of SWEPCO, and the testimonies of SWEPCO witnesses Rambin, Dillahunty, Munson, Capelan and Bargmann. SWEPCO and the Staff also introduce the testimonies of Staff members Boecker, Almon and Bradford. All such introductions are without objection or the necessity of tendering witnesses for cross-examination.

II.

SWEPCO and the Staff hereby introduce this agreement and the proposed Findings of Fact and Conclusions of Law to further document the stipulated interim fixed fuel factors.

III.

For settlement purposes only, SWEPCO and the Staff have agreed to the rate-year known or reasonably predictable reconcilable fuel-costs and KWH sales and the elements and amounts described in the attached Exhibits and Schedules as further described in this Stipulation. While SWEPCO and the Staff believe that the facts in this case provide sufficient legal support for the settlement, no party to this proceeding shall be deemed to have approved, accepted, agreed or consented to any ratemaking principle underlying or supposed to underlie any of the amounts determined in this case to be reasonable or underlying any amount agreed to for purposes of settlement as reasonable.

IV.

NEED FOR INCREASE

As of June 30, 1988, SWEPCO reported a fuel cost under-recovery balance for its Texas retail jurisdiction of approximately $6,232,430 excluding interest; with interest of $361,541 included, the total under-recovery was $6,593,971. SWEPCO's level of materiality is approximately $4,320,865. The existing under-recovery was due to: an adjustment to the coal inventory as a result of an aerial survey; changes in fuel prices (part of which was the result of an increase in Federal royalties on coal); changes in allocated Texas KWH sales; and changes in generation mix. The changes occurred since SWEPCO's current fixed fuel factors were established.

Additionally, SWEPCO projected that if the current tri-annual fixed fuel factors (set in Docket No. 6611 - 1986, and Docket No. 7635 - 1987) were to remain unchanged, SWEPCO would continue to under-recover its fuel and purchased power expenses by approximately $10,114,168, excluding interest, for the period July 1988 through August 1989 due to increased prices for fuel and payments for federal royalty on coal. That projected under-recovery, when combined with the current under-recovery of $6,593,971 (including interest) would total $16,708,139. To prevent the incurrence of continued significant under-recoveries, SWEPCO proposed to increase its fuel factors to recover the known or reasonably predictable reconcilable fuel costs to be incurred during the rate year of September 1, 1988 through August 31, 1989. The increased fuel factors proposed by SWEPCO would have increased total retail fuel revenues by approximately 7.02 percent during the rate year over the fuel revenues that would have been received had the existing fuel factors continued in effect during that period.

The rate-year known or reasonably predictable reconcilable fuel-costs stipulated herein reflect a settlement approximating unit fuel costs changes for the same period. The projected efficiency of SWEPCO's generation operations during the rate year is reasonable for purposes of establishing interim fixed fuel factors which are subject to later reconciliation. The result of the payments for the federal royalty on coal and increases in unit fuel costs is to increase the known or reasonably predictable fuel

costs for the rate year and to render SWEPCO's existing fuel factors inadequate.

V.

FORM OF SWEPCO'S REQUEST

This Stipulation provides for an increase of SWEPCO's existing interim fixed fuel factors. While the Public Utility Regulatory Act provides for increases in fuel factors after hearing and Commission Order, Commission Substantive Rule 23.23 appears to provide for increasing fuel factors in either a rate case, a fuel reconciliation proceeding or an "emergency" proceeding. This request is not a rate case and is not an emergency because the eventual changes and increases in fuel costs were known or anticipated several years ago when the fuel factors were established. SWEPCO is also not requesting, and no affected party to this case has requested, a reconciliation of historic fuel costs at this time for several reasons. First, fuel reconciliations focus on historic operations, while setting a fuel factor is based on determination of known or reasonably predictable fuel costs for a future rate year, and thus is forward looking. Based on prior experience, fuel reconciliations are extremely lengthy, time consuming and costly. SWEPCO's overriding desire is to prevent any further under-recovery in an as expeditious manner as is possible and it is SWEPCO's belief that participation in a fuel reconciliation at this time would simply delay that necessary relief.

If the fuel factors charged to SWEPCO's customers are not changed to reflect in a timely manner any increased fuel costs which SWEPCO will incur, customers will be adversely impacted as a result of the Company's substantial under recoveries of fuel costs. The time required for a reconciliation proceeding would not permit either timely change to reflect fuel costs or prevention of the accumulation of substantial under-recoveries. With increased under-recoveries, SWEPCO will likely substantially exceed the level of materiality and at SWEPCO's next fuel reconciliation SWEPCO customers will likely be faced not only with increases in fuel factors to recover future increased costs, but also with larger surcharges of prior under-recoveries. The impact of increased fuel factors plus surcharges would be more adverse than would be the impact of concurrent fuel cost recovery. In addition, concurrent recovery generally best serves the public interest by matching the recovery of fuel costs with the customer base and customer usage causing the fuel cost.

SWEPCO understands that in circumstances wherein an under-recovery exists, interest on that under-recovery is accrued, for which the ratepayer is responsible, and in the under-recovery situation any postponed or delayed reconciliation would result in additional interest being due from the ratepayer. Since it is primarily SWEPCO's decision as to when to seek a fuel reconciliation of fuel costs, SWEPCO does not wish to place the ratepayer in the position of paying additional interest. Therefore, SWEPCO will cease accruing interest on the under-

recovery existing at June 30, 1988 in order to avoid unnecessarily adversely impacting its customers.

With the reported under-recovery, the public interest in matching fuel costs and fuel recoveries, the time and expense necessary for a reconciliation proceeding, and the lack of any statutory provisions which would require increased fuel factors to be set in a reconciliation proceeding, the parties have agreed that a reconciliation is not necessary in this proceeding. As a result, SWEPCO and the Staff agree that in this case SWEPCO should be granted an exception to PUC Substantive Rule 23.23(b)(2)(C) for good cause shown as allowed by PUC Substantive Rule 23.2 to the extent such exception is necessary to permit the establishment of new fuel factors outside of a rate case, reconciliation proceeding or emergency proceeding.

VI.

TRI-ANNUAL FIXED FUEL FACTORS

SWEPCO and the Staff request approval of interim tri-annual fixed fuel factors as indicated below. Such factors are based on a $122,353,382 rate year known or reasonably predictable retail reconcilable fuel cost and are estimated to increase retail fuel revenues by approximately $6.5 million in the rate year or a 5.6 percent increase in total retail fuel revenues over this same period. SWEPCO has utilized tri-annual fixed fuel factors since Docket No. 6611, by Commission order issued in November 1986. The proposed interim fuel factors contained in this filing continue the

use of tri-annual fuel factors which SWEPCO has previously utilized.

Presented below are the currently effective and stipulated interim fixed fuel factors per KWH.

EXISTING FIXED FUEL FACTORS

Billing Months	
Jan., Feb., Mar., Apr.	$.01969 per KWH
May, Jun., Jul., Aug.	$.02062 per KWH
Sep., Oct., Nov., Dec.	$.01762 per KWH

STIPULATED INTERIM FIXED FUEL FACTORS

Billing Months	
Jan., Feb., Mar., Apr.	$0.01978
May, Jun., Jul., Aug.	$0.02203
Sep., Oct., Nov., Dec.	$0.01932

SWEPCO and the Staff propose that the line loss multipliers as provided below be used to adjust the fixed fuel factors to account for line losses:

LINE LOSS MULTIPLIERS

Transmission	
138 KV	.95659
69 KV	.96619
Substation*	.97325
Primary	.98693
Secondary	1.02206

*Applicable to Primary Service supplied from the substation bus for customers served on LLP rate schedule.

SWEPCO and the Staff propose that these new interim fuel factors as adjusted for line losses be placed in effect for bills rendered on and after January, 1989 or with the first monthly billing cycle after the entry of a final order. The application of these new interim fixed fuel factors as discussed above is consistent with the practice approved by the Commission in Docket Nos. 6611 and 7635 wherein SWEPCO lowered fixed fuel factors and made refunds. This practice is also consistent with the manner in which fuel costs and fuel cost recoveries are recorded on the Company's books. The fuel factors are derived from and supported by the following schedules and exhibits attached to this Stipulation:

Exhibit 1:	Brian Almon Testimony, Revised Schedule BA1
Exhibit 2:	Waldon Boecker Testimony, Supplemental Schedules WB4 and WB6. (Staff Projected Fuel and Purchased Power Costs on System for Rate Year - September 1988 to August 1989)
Exhibit 3:	Eugene Bradford Testimony, Revised Schedule 2
Exhibit 4:	SWEPCO Tariff Sheet No. 37, Fixed Fuel Factor
Exhibit 5:	Affidavit of Andrew O. Rambin, Jr.

VII.

NOTICE

SWEPCO has provided notice by publication once each week for four consecutive weeks in newspapers having general circulation in each county containing territory affected by SWEPCO's proposed change. Under the terms of Examiner's Order No. 3, September 22, 1988, SWEPCO was to provide notice of this request by mailing individual postcard notices to all SWEPCO's Texas retail customers. SWEPCO has filed: proof of publication in the form of publishers' affidavits with the Commission on October 13, 1988; and proof of individual notice and notice to municipalities by affidavit with copies of the notices attached thereto (attached as Exhibit 5). The affidavit of SWEPCO employee Rambin with attachments and the appropriate publishers' affidavits indicating proof of notice were filed with the Commission on November 23, 1988 and October 13, 1988 respectively.

VIII.

It is recognized and agreed that the Parties hereto, by filing this stipulation and motion, do not express agreement to or concurrence with any specific methodology, finding or conclusion expressed herein and that such stipulation and motion is made and filed solely in connection with compromise settlement of this Docket and subject to the specific approval by the Commission of the matters herein stipulated and agreed to between the Parties. It is also recognized that the Commission and

Hearings Examiner are not in any manner bound to accept or approve the matters herein stipulated.

The Parties to this stipulation further agree that the settlement of this case does not address or bind any Party to any methodology, assumption or result in a subsequent fuel cost reconciliation proceeding that covers the period of time in which these factors will be in effect.

IX.

The Findings of Fact and Conclusions of Law attached hereto accurately reflect the stipulated basis for and support the agreed settlement. It is requested by the Parties that these Findings and Conclusions be adopted by the Commission.

X.

This stipulation may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall be considered one and the same instrument.

NOW, THEREFORE, the Parties to this stipulation move the Commission that such stipulation be in all things approved and that the Commission enter its Final Order in accordance with the same.

Respectfully submitted on this
29th day of November, 1988,

SOUTHWESTERN ELECTRIC POWER COMPANY

By _____

Nancy Leshikar
Redford, Wray & Woolsey
A Professional Corporation
7800 Shoal Creek Boulevard
Suite 118-W
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PUBLIC UTILITY COMMISSION OF TEXAS

By _____

Bret Slocum
General Counsel - Public Utility
Commission of Texas
7800 Shoal Creek Boulevard
Suite 400-N
Austin, Texas 78757

PROPOSED FINDINGS OF FACT

1. Southwestern Electric Power Company (SWEPCO) is an investor-owned utility providing service within the State of Texas pursuant to a Certificate of Convenience and Necessity issued by the Public Utility Commission of Texas.

2. On July 29, 1988 SWEPCO filed with the Public Utility Commission of Texas a Petition for an Order to Increase Interim Fixed Fuel Factors.

3. SWEPCO proposed fixed fuel factors calculated to reflect known or reasonably predictable reconcilable fuel costs for the rate year beginning September 1988 and ending August 1989. The factors proposed by SWEPCO would result in an increase of approximately $8.1 million in retail fuel revenues or a 7.02 percent increase in total retail fuel revenues for the period September 1988 through August 1989 (rate year). SWEPCO proposed known or reasonably predictable reconcilable retail fuel costs for the rate year of $284,585,399.

4. The Office of Public Utility Counsel, Texas Industrial Energy Consumers and Lone Star Steel were granted intervenor status in this proceeding.

5. The Staff of the Public Utility Commission filed testimony which proposed adjustments to SWEPCO's initial requested total Company on-system fuel costs that resulted in a Staff total Company

on-system rate year fuel cost of $280,860,800, a 1.3% percent difference. The Staff proposed level of rate year Texas retail jurisdiction reconcilable fuel costs was $122,353,382.

6. SWEPCO, OPC, LSS and the Staff met together and SWEPCO and the Staff resolved their differences so as to permit the Petition to be resolved on a stipulated basis, without expressing agreement to specific methodologies or standards of review and their effect in future proceedings.

7. The Petition of SWEPCO and testimonies of SWEPCO and Staff witnesses were admitted without objection or necessity of cross-examination.

8. SWEPCO's fuel costs, fuel procurement practices and generation efficiency were last subject to reconciliation review in Docket No. 6611.

9. Reconciliation proceedings have required six to twelve months to process to final order and can involve substantial expense.

10. SWEPCO's annual fuel costs will increase as a result of changes in fuel prices, most notably from an increase in the federal royalty on coal.

11. SWEPCO reported a $6,593,971 (including interest) under-recovery as of June 30, 1988.

12. If SWEPCO were not permitted to increase its fuel factors concurrent with any increases in costs, it is likely that SWEPCO would continue to under-recover and would be substantially in excess of the threshold for material under-recoveries of fuel cost by August 1989.

13. SWEPCO customers would likely be adversely impacted by a delay in the implementation of increased fuel factors since the delay would likely cause the accumulation of substantial under-recovery amounts subject to interest charges and ultimately chargeable to customers in a subsequent time period. The public interest is generally best served by preventing, to the degree possible, a mismatch in either time between fuel cost incurrence and fuel cost recovery or customer identity.

14. The rate year known or reasonably predictable fuel costs as stipulated reflect reasonably efficient system operations including the economic dispatch of the SWEPCO system.

15. SWEPCO's known or reasonably predictable retail reconcilable fuel costs for the rate year are $122,353,382.

16. SWEPCO's known or reasonably predictable retail kwh sales for the rate year are 5,984,449,000 kwh.

17. The existing and stipulated interim fixed fuel factors are as follows:

EXISTING FIXED FUEL FACTORS

Billing Months	
Jan., Feb., Mar., Apr.	$.01969 per KWH
May, Jun., Jul., Aug.	$.02062 per KWH
Sep., Oct., Nov., Dec.	$.01762 per KWH

STIPULATED INTERIM FIXED FUEL FACTORS

Billing Months	
Jan., Feb., Mar., Apr.	$0.01978
May, Jun., Jul., Aug.	$0.02203
Sep., Oct., Nov., Dec.	$0.01932

18. SWEPCO and the Staff stipulated to line loss multipliers as follows:

Transmission	
138 KV	.95659
69 KV	.96619
Substation*	.97325
Primary	.98693
Secondary	1.02206

*Applicable to Primary Service supplied from the substation bus for customers served on LLP rate schedule

19. The stipulated interim fixed fuel factors as adjusted for line losses provide for the recovery of known or reasonably predictable reconcilable fuel costs for the rate year.

20. It is appropriate that the proposed interim fixed fuel factors as adjusted for line losses be effective for bills rendered on and after January 1989 or with the first monthly billing cycle after the entry of a final order to be consistent with both the manner in which fuel costs and fuel revenues are recorded on SWEPCO's books and the practice approved by this Commission in Docket Nos. 6611 and 7635.

21. Notice was provided under the terms of Examiner's Order No. 3, as shown by the affidavit of SWEPCO personnel and publishers' affidavits filed with the Commission.

22. SWEPCO and the Staff specifically reserved all issues which would be considered in a fuel reconciliation proceeding.

PROPOSED CONCLUSIONS OF LAW

1. SWEPCO is a public utility as defined in Section 3(c)(1) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986).

2. The Commission has jurisdiction over this matter pursuant to Sections 17(e) and 43(g) of the PURA. Under Section 43(g)(2) of the PURA, increases in fuel factors charged to customers may only be made upon a public hearing and order of the Commission. The Commission's statutory authority to set fuel factors is not limited to or by the particular factual circumstances addressed in the Commission's Substantive Rules.

3. Under the provisions of the PUC Subst. R. 23.23(b)(2)(B)(i), fixed fuel factors are to be based upon known or reasonably predictable fuel costs during the period that the rates will be in effect. Known or reasonably predictable reconcilable fuel costs are determined after consideration of all conditions and events which will impact the fuel-related cost of supplying electricity to ratepayers including generation mix and efficiency, the cost of fuel, purchased power costs and wheeling costs.

4. Under the provisions of PUC Subst. R. 23.23(b)(2)(c), rate year known or reasonably predictable fuel costs are translated into fixed fuel factors by dividing such costs by kilowatt-hour sales for the rate year.

5. The rate year known or reasonably predictable reconcilable fuel costs embodied in the Findings of Fact are appropriate, and constitute reasonable and necessary expenses of SWEPCO's operations. Pursuant to P.U.C. SUBST. R. 23.23(b)(2)(F), SWEPCO's fuel costs and revenues are subject to final reconciliation at the time of SWEPCO's next general rate case or fuel reconciliation proceeding.

6. To the extent that is necessary for the Commission to exercise its statutory authority under Section 43(g)(2), SWEPCO should be granted an exception to PUC SUBST. R. 23.23(b)(2)(c) for good cause shown as allowed by PUC SUBST. R. 23.2, because it is appropriate in this case for SWEPCO to increase its fuel factors without a fuel reconciliation.

7. Notice was appropriately provided under PUC PROC. R. 21.22(b).

8. SWEPCO and the Staff agreed that they do not express agreement to or concurrence with any specific methodology, finding or conclusion expressed herein.

9. This order shall become effective upon consideration and approval by the Public Utility Commission of Texas at its final orders meeting in this proceeding.

10. All motions, applications, and requests for entry of specific findings of fact and conclusions of law and any other requests for relief general or specific not expressly granted herein are DENIED.

EXHIBIT 1

PUBLIC UTILITY COMMISSION OF TEXAS

SOUTHWESTERN ELECTRIC POWER COMPANY - DOCKET 828 0

PROJECTED DELIVERED/INVENTORY FUEL PRICES
($/MMBtu)

Revised
Schedule BA-1

SUPPLIER	SEP	OCT	NOV	DEC	JAN 1989	FEB	MAR	APR	MAY	JUN	JUL	AUG
DEDICATED GAS:												
(NO CHANGES TO SWEPCO PRICES)												
JALA	3.00	--	--	--	--	--	--	--	--	--	--	--
DELHI	3.82	3.82	3.82	3.82	3.82	3.82	3.82	3.82	3.82	3.82	3.82	3.82
DISCRETIONARY (SPOT) GAS:												
SWEPCO	1.75	1.75	1.75	1.75	2.01	2.01	2.01	2.01	2.01	2.01	2.01	2.01
PUCT	1.53	1.62	1.57	1.81	2.44	2.34	1.98	1.54	1.86	1.82	1.89	1.94
COAL:												
AMAX (WELSH), SWEPCO	2.08	2.09	2.10	2.11	2.12	2.13	2.14	2.15	2.15	2.16	2.17	2.17
PUCT	2.08	2.08	2.08	2.08	2.10	2.11	2.12	2.12	2.13	2.14	2.15	2.15
AMAX SPOT (WELSH), NO CHANGE	1.36	1.36	1.36	1.36	1.36	1.36	1.36	1.36	1.36	1.36	1.36	1.36
AMAX (FLINT CREEK), SWEPCO	1.54	1.55	1.56	1.57	1.58	1.58	1.58	0.00	1.59	1.59	1.60	1.60
PUCT	1.53	1.53	1.52	1.52	1.54	1.55	1.55	1.56	1.57	1.57	1.58	1.58
LIGNITE:												
SABINE MINING CO., NO CHANGE	1.28	1.31	1.34	0.00	1.32	1.30	1.23	1.25	1.20	1.14	1.12	1.08
DOLET HILLS MIN. VEN., SWEPC	1.19	1.20	1.21	1.23	1.23	1.24	1.24	1.24	1.25	1.25	1.27	1.27
PUCT	1.18	1.19	1.20	1.22	1.22	1.22	1.22	1.23	1.23	1.23	1.25	1.25
STARTER FUEL:												
(NO CHANGES TO SWEPCO PRICES)												
WELSH FUEL OIL	3.49	3.50	3.51	3.51	3.53	3.55	3.57	3.60	3.62	3.64	3.66	3.68
FLINT CREEK FUEL OIL	3.70	3.70	3.71	3.71	3.74	3.76	3.78	3.80	3.82	3.85	3.87	3.89
PIRKEY GAS	2.47	2.47	2.47	2.47	2.47	2.47	2.47	2.47	2.47	2.47	2.47	2.47
DOLET HILLS GAS	1.89	1.89	1.89	1.89	1.89	1.89	1.89	1.89	1.89	1.89	1.89	1.89

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SWEPCO/STAFF
JOINT- 1A. ajk
11-29-88 D-8280 Jt. 8297

Docket No. 8280
Staff Projected Fuel and Purchased Power Costs
On System for Rate Year September 1988 to August 1989

Supplemental
Schedule WB4
Page 1 of 1

	Capability MW	net 1000 Mwh	1000 $	Capacity Factor	Heat Rate	$ per Million Btu	$ per Mwh	% of Mwh
Welsh	1584	8,310.4	183,289.2	59.9%	10.6	2.07	22.06	50.2%
Flint Creek	240	1,326.8	21,984.2	63.1%	10.6	1.56	16.57	8.0%
Total Coal	1824	9,637.2	205,273.4	60.3%	10.6	2.00	21.30	58.2%
Pirkey	557	2,616.9	38,040.9	53.6%	11.8	1.23	14.54	15.8%
Dolet Hills	257	1,416.8	18,638.2	62.9%	10.8	1.22	13.16	8.6%
Total Lignite	814	4,033.6	56,679.1	56.6%	11.4	1.23	14.05	24.3%
Knox Lee	500	691.6	12,745.6	15.8%	10.2	1.80	18.43	4.2%
Wilkes	879	398.9	8,975.8	5.2%	10.1	2.22	22.50	2.4%
Leiberman	276	314.0	6,130.0	13.0%	10.5	1.86	19.52	1.9%
Lone Star	50	140.4	6,716.0	32.1%	12.9	3.72	47.83	0.8%
Arsenal Hill	100	35.2	770.6	4.0%	11.6	1.88	21.89	0.2%
Total Gas	1,805.0	1,580.1	35,338.0	10.0%	10.5	2.13	22.36	9.5%
Total Generation	4,443.0	15,250.9	297,290.5	39.2%	10.8	1.80	19.49	92.1%
Non Rec. Gen.			7,026.1					
Reconcilable Gen.		15,250.9	290,264.4			1.75	19.03	92.1%
Total Purchases		1,316.6	15,393.3				11.69	7.9%
Non Rec. Purchases			4,510.2					
Reconcilable Purchases		1,316.6	10,883.1				8.27	7.9%
Total Reconcilable Costs		16,567.5	301,147.5				18.18	100.0%
Off System Sale Revenue		(1,102.1)	(20,286.6)				18.41	-6.7%
On System Reconcilable		15,465.4	280,860.8				18.16	93.3%

Docket No. 8280
taff vs. SWP Projection of Reconcilable Fuel and Purchased Power Costs

Supplemental Schedule WB6
November 23, 1988
W.A. Boecker

	Sep 88	Oct 88	Nov 88	Dec 88	Jan 89	Feb 89	Mar 89	Apr 89	May 89	Jun 89	Jul 89	Aug 89	Tota
SwepCo Projection	26,458.8	22,280.8	22,928.6	24,196.3	22,770.1	21,052.3	20,494.9	22,831.8	24,564.3	30,528.3	33,128.3	33,637.4	304,872.(
Staff Projection	26,025.2	22,046.3	22,421.9	23,969.2	22,607.1	20,900.7	20,361.4	22,579.6	24,274.2	30,180.6	32,574.9	33,206.3	301,147.!
Difference	(433.7)	(234.6)	(506.7)	(227.0)	(163.0)	(151.6)	(133.5)	(252.2)	(290.1)	(347.7)	(553.3)	(431.1)	(3,724.(
	-1.6%	-1.1%	-2.2%	-0.9%	-0.7%	-0.7%	-0.7%	-1.1%	-1.2%	-1.1%	-1.7%	-1.3%	-1.2
SwepCo Off System Revenue	1,796.1	833.0	2,658.3	2,242.0	2,009.3	1,343.1	991.6	1,623.9	1,355.8	2,487.0	1,584.7	1,361.8	20,286.(
taff On System Projection	24,229.0	21,213.2	19,763.6	21,727.3	20,597.8	19,557.6	19,369.8	20,955.7	22,918.4	27,693.6	30,990.3	31,844.5	280,860.8

ote: SwepCo Projections from response to General Counsel's First Request for Information, EN01.
Above SwepCo and Staff projections for total system (prior to application of Texas allocator).

Exhibit 3

Docket 8200

Revised Schedule II
Page 1 of 1

Description	SEP 88	OCT 88	NOV 88	DEC 88	JAN 89	FEB 89	MAR 89	APR 89	MAY 89	JUN 89	JUL 89	AUG 89
Total Company Fuel and Energy (A)	$24,229,100	$21,213,300	$19,763,600	$21,727,200	$20,597,800	$19,557,600	$19,369,800	$20,955,700	$22,918,400	$27,693,600	$30,990,200	$31,844,500
Texas Retail Allocator (B)	0.41718899	0.44329708	0.42526828	0.43867734	0.46892677	0.45768953	0.46445496	0.46085935	0.44889706	0.4245972	0.41369065	0.401144
Total Texas Fuel and Energy	$10,108,114	$9,403,794	$8,404,832	$9,531,230	$9,658,860	$8,951,309	$8,996,400	$9,657,630	$10,288,002	$11,758,625	$12,820,356	$12,774,230
Triannual Fuel and Energy Costs				$37,447,970				$37,264,199				$47,641,213
Texas Retail KWH Sales @ Meter (C)	560,499,000	483,148,000	424,958,000	469,823,000	508,005,000	464,557,000	452,918,000	458,278,000	464,686,000	519,796,000	581,715,000	596,066,000
Triannual KWH @ Meter				1,938,428,000				1,883,758,000				2,162,263,000
Cost per KWH per Month	$0.01803	$0.01946	$0.01978	$0.02029	$0.01901	$0.01927	$0.01986	$0.02107	$0.02214	$0.02262	$0.02204	$0.02143
Texas Retail Triannual Fuel Factors				$0.01932				$0.01978				$0.02203
Retail Loss Correction Factors (D)												
Transmission												
138 KV				0.95659				0.95659				0.95659
69 KV				0.96619				0.96619				0.96619
Substation				0.97325				0.97325				0.97325
Primary				0.98693				0.98693				0.98693
Secondary				1.02206				1.02206				1.02206
Texas Retail Triannual Fuel Factors by Voltage Level				$0.01932				$0.01978				$0.02203
Transmission												
138 KV				$0.01848				$0.01892				$0.02107
69 KV				$0.01867				$0.01911				$0.02129
Substation				$0.01890				$0.01925				$0.02144
Primary				$0.01907				$0.01952				$0.02174
Secondary				$0.01975				$0.02022				$0.02252

Sources:
(A) Staff Engineer Waldon Boecker
(B) Exhibit SKD-4, Page 1 to Mr. Bargmann's Testimony
(C) Staff Economist Jeff Rosenbluo
(D) Exhibit ADR-4, Page 1 to Mr. Rabbin's Testimony

SECTION TITLE	RATES, CHARGES, AND FEES	SHEET NUMBER	37
SECTION NUMBER	4.11	EFFECTIVE DATE	
APPLICABLE	ALL AREAS	ORIGINAL REVISION NUMBER	3

FIXED FUEL FACTOR
(FUEL COST COMPONENT OF BASE RATES)
(SCHEDULE FC)

Applicable to all standard rates and all kilowatt-hours sold thereunder. For electric service billed under applicable rate schedules for which there is no metering, the monthly usage shall be estimated by the Company and the fuel factors shall be applied. The following fuel factors adjusted by the appropriate loss multiplier will be included in each rate schedule to recover fuel costs:

Applicable Period	Fixed Fuel Factor	
January, February, March, April	$ .01978 per kilowatt-hour	I
May, June, July, August	$ .02203 per kilowatt-hour	I
September, October, November, December	$ .01932 per kilowatt-hour	I

The cost of fuel included within the Fixed Fuel Factor is comprised of the following items:

1. Cost of fuel consumed in Company's generating plants, plus
2. Cost of purchased economy energy and power and energy purchased from small power production and cogeneration facilities, plus
3. Cost of other purchased energy (excluding capacity charges), plus
4. Cost of small power production and cogeneration, wheeling and other costs associated with generated or purchased power as approved by the Public Utility Commission of Texas, less
5. Cost of energy (excluding capacity charges) sold outside the retail jurisdictional system.

The cost of fuel consumed in the Company's generating plants shall include only these items includible in FERC Accounts 501 and 547 less those costs determined in Docket No. 5301 to be nonrecoverable and/or nonreconcilable through the Fixed Fuel Factor.

SECTION TITLE	RATES, CHARGES, AND FEES	SHEET NUMBER	37.01
SECTION NUMBER	4.11	EFFECTIVE DATE	
APPLICABLE	ALL AREAS	ORIGINAL REVISION NUMBER	3

FIXED FUEL FACTOR
(FUEL COST COMPONENT OF BASE RATES)
(SCHEDULE FC)

The Fixed Fuel Factor for the applicable period will be adjusted by the appropriate loss multiplier to account for differences in line losses corresponding to the voltage level of service. The line loss multipliers are as follows:

Transmission		
138 KV	.95659	I
69 KV	.96619	I
Substation *	.97325	I
Primary	.98693	I
Secondary	1.02206	I

* Applicable to Primary Service supplied from the substation bus for customers served on the LLP rate schedule.

The Company will maintain up-to-date monthly and cumulative records of fuel costs, fuel revenues and the difference between them. When permitted in accordance with Public Utility Commission of Texas Substantive Rule 23.23 (b) (2), Rate Design, the Company will reconcile any cumulative over or underrecovery of fuel cost and will either credit or surcharge, whichever is appropriate, the over or under-recovered fuel costs with interest at the Company's appropriate cost of capital.

The Fixed Fuel Factor is subject to change by the Commission in accordance with Substantive Rule 23.23 (b) (2), Rate Design.

AFFIDAVIT OF ANDREW O. RAMBIN, JR.

STATE OF TEXAS §

COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared ANDREW O. RAMBIN, JR. who, being by me duly sworn, stated the following:

1. My name is Andrew O. Rambin, Jr. I am over the age of 21 years, have personal knowledge of the facts set forth below and am otherwise competent to testify to the facts set forth herein.

2. I am employed by Southwestern Electric Power Company (SWEPCO) in the position of Manager of the Rate Department. As such, I am responsible for coordinating the provision of notices regarding the Company's filings at the Public Utility Commission of Texas to the incorporated municipalities and to retail Texas Customers served by SWEPCO including the notice for the Company's July, 1988 Petition for an Order to Increase Interim Fixed Fuel Factors.

3. Attached as Exhibit A is a copy of the notice which was mailed to each of the incorporated municipalities having original jurisdiction in SWEPCO's Texas service area on July 29, 1988.

4. Attached as Exhibit B is a copy of the notice which was mailed to each of SWEPCO's Texas retail customers on October 13, 1988.

5. The publishers' affidavits and tearsheets reflecting that notice of SWEPCO's request to increase its fuel factors had been published 4 times in newspapers having general circulation in SWEPCO's service area was filed with the Comsision on October 13, 1988.

Andrew O. Rambin, Jr.

SUBSCRIBED AND SWORN TO before me this 23rd day of November, 1988.

DARLENE L. HENSON
Notary Public, State of Texas
My Commission Expires May 5, 1990

Darlene L. Henson
Notary Public in and for the State of Texas

My Commission Expires:
5/5/90

Southwestern Electric Power Company
P. O. BOX 21106 · SHREVEPORT, LOUISIANA 71156

ANDREW O. RAMBIN, JR.
Manager, Rate Department

July 29, 1988

TO THE HONORABLE CITY COUNCIL:

On July 29, 1988, Southwestern Electric Power Company (SWEPCO or Company) filed with the Public Utility Commission of Texas (Commission) a Petition asking for permission to increase its fixed fuel cost factors. SWEPCO is requesting approval of these factors on an expedited basis, subject to refund, effective with the September 1988 billing period.

According to Section 43(g) of the Public Utility Regulatory Act, as interpreted by the Commission, this filing is not a rate case within the primary jurisdiction of municipal governing bodies. Therefore, this letter is to notify you of the filing and to advise of your right to seek intervention at the Commission should you so desire.

SWEPCO currently has under-recovered its Texas retail fuel expenses by approximately $6,232,430 excluding interest; with interest of $361,541 included, the total under-recovery is $6,593,971. SWEPCO anticipates further increases in the cost of fuel, much of which is caused by an increase in Federal royalties on Wyoming coal delivered to Company power plants. SWEPCO has determined if its current factors remain unchanged, it will continue to under-recover its fuel costs and at the end of August 1989 will have under-recovered its costs by an additional $10,114,168 for a total under-recovery of $16,346,598, excluding interest.

In this Petition SWEPCO seeks to prevent any further under-recovery of its fuel costs by increasing its fixed fuel factors. The proposed factors would increase fuel revenues by $8,126,733. Currently, fuel revenues constitute approximately 41% of the Company's total Texas retail revenues.

The filing affects only the fuel portion of the base rates charged by the Company for electricity and has no impact whatsoever on the non-fuel, fixed base rates presently in effect. While the proposed fixed fuel factors are higher than the current factors, they are lower than the fuel factors previously in effect in 1984 and 1985.

The average basic residential customer using 847 kilowatt-hours a month would see an increase of 2.14 % annually or $1.25 per month on his electric bill if the new factors are approved.

A copy of the Petition is attached. Should you have any questions after your review of the Petition please don't hesitate to call me or your local SWEPCO representative.

Sincerely,

Andrea Rambin

vvk
Enclosure

(Exhibit B)

SOUTHWESTERN ELECTRIC POWER COMPANY
Rate Department
P. O. Box 21106
SHREVEPORT, LA 71156

PRESORTED
FIRST CLASS MAIL
U.S. POSTAGE PAID
SHREVEPORT, LA
PERMIT NO. 1

NOTICE OF PETITION FOR ORDER TO INCREASE INTERIM FIXED FUEL FACTORS

SOUTHWESTERN ELECTRIC POWER COMPANY (SWEPCO or Company) hereby publishes NOTICE that it has filed with the Public Utility Commission of Texas (Commission) a Petition For Order To Increase Interim Fixed Fuel Factors pursuant to the provisions of Article 1446e, Section 43(g), V.A.T.S. The Petition has been docketed as Docket No. 8290.

The filing affects only the fuel portion of the Texas rates charged by the Company for electricity and has no impact whatsoever on the non-fuel base rates presently in effect. These proposed fuel factors, while higher than the current factors, are lower than the factors in effect in 1984 and 1985. The average basic residential customer using 947 kilowatt-hours a month would see an increase of 2.14% annually or $1.25 per month on his electric bill if the new factors are approved.

If approved, the proposed fixed fuel factors would increase Texas retail fuel revenues approximately $8,126,733 or 7.02% on an annual basis. Fuel revenues constitute approximately 41% of the Company's total Texas retail revenues. All customers in all of the Company's Texas retail classes are affected by this request.

Persons who wish to intervene or otherwise participate in these proceedings should notify the Commission by not later than 4:00 p.m. on Friday, October 28, 1988, which is the deadline for intervention set by the Examiner in this proceeding. A request to intervene, participate, or for further information should be mailed to the PUBLIC UTILITY COMMISSION OF TEXAS, 7800 Shoal Creek Boulevard, Suite 400 N, Austin, Texas, 78757. Further information may also be obtained by contacting a local SWEPCO business office or by calling the PUBLIC UTILITY COMMISSION, PUBLIC INFORMATION DIVISION AT (512) 458-0221, TELETYPEWRITER FOR THE DEAF ALSO AT (512) 458-0221.

DOCKET NO. 8280

APPLICATION OF SOUTHWESTERN ELECTRIC POWER COMPANY FOR AUTHORITY TO INCREASE INTERIM FIXED FUEL FACTORS	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS

FINAL ORDER

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

1. The petition of Southwestern Electric Power Company for an order to increase fixed fuel factors is GRANTED to the extent recommended in the revised Examiner's Report, and as set forth in the stipulation of SWEPCO and the General Counsel.

2. The Commission's order in this case is based upon a partial stipulation which was reached by negotiation between General Counsel and SWEPCO. The Commission has not and should not be deemed to have endorsed, accepted, agreed to, or approved any underlying theory or methodology which provides the basis for the stipulation. The stipulation is found to be reasonable and the Commission has adopted it for that reason alone. The Commission reserves the right to scrutinize more closely any and all such theories and methodologies in future cases.

3. Southwestern Electric Power Company's interim fixed fuel factors as set forth in the stipulation are hereby APPROVED effective the date this Order is signed.

4. This Order is deemed effective upon the date of signing.

5. The Commission staff is DIRECTED to make the appropriate investigations in light of, and consistent with, the Commissioners' remarks during the April 6, 1989, final orders meeting, and to file a rate or fuel inquiry as necessary based on the staff's investigations and its current workload.

6. All motions, applications and requests for specific findings of fact and conclusions of law, if not expressly granted herein, are DENIED for want of merit.

SIGNED AT AUSTIN, TEXAS on this 6th day of April 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Marta Greytok
MARTA GREYTOK

SIGNED: Jo Campbell
JO CAMPBELL

SIGNED: William B Cassin
WILLIAM B. CASSIN

ATTEST:

Phillip A. Holder
PHILLIP A. HOLDER
SECRETARY OF THE COMMISSION

APPLICATION OF STAMFORD ELECTRIC COOPERATIVE, INC. FOR CHANGE IN LINE EXTENSION POLICY	§ § §	DOCKET NO. 8885

December 13, 1989

This docket involves a request to change service rules and regulations relating to line extensions as well as to establish a new line extension policy for large industrial service. The Commission approved the requested changes related to existing line extension policies. The Commission rejected the request to establish a new line extension policy for large industrial service.

[1] RATEMAKING--COST OF SERVICE--GENERAL THEORY
RATEMAKING--RATE DESIGN--ELECTRIC--MISCELLANEOUS

Stamford Electric Cooperative's (the Co-op's) request to amend its line extension policy by extending the "free" extension to its customers was just and reasonable because the Co-op established that the changes would afford relief to persons requesting new extensions and that the changes would not affect the Co-op's financial integrity. (p. 1474)

[2] The Co-op's request to establish a new line extension policy for large industrial customers was rejected by the Commission because: (1) the proposed policy did not set out rates and all rules and regulations affecting the line extension charges as required by §32 of PURA; (2) the proposed policy did not establish rates for line extension service with sufficient certainty to find that the rates are just, reasonable, and nondiscriminatory as required under §38 of PURA; and (3) the proposed policy would allow the Co-op to charge an additive above actual construction costs based on subjective factors that can be exercised differently in each situation. (p. 1477)

DOCKET NO. 8885

APPLICATION OF STAMFORD ELECTRIC COOPERATIVE, INC. FOR CHANGE IN LINE EXTENSION POLICY	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Introduction

Stamford Electric Cooperative, Inc. ("Stamford" or "Cooperative") requests authority to change its service rules and regulations relating to line extensions as well as to establish a new policy for large industrial service. General Counsel and the Commission Staff recommend approval of the application and have entered into an agreement with the Cooperative. For the reasons discussed below, the Administrative Law Judge ("ALJ") recommends the Commission approve the proposed changes to extend the free extensions for certain classes of customers and to deny the proposed new line extension policy for large industrial service.

II. Procedural History

Stamford filed an application on June 13, 1989, requesting several changes in its line extension policy. Examiner Richard O'Connell was assigned to process the application. The Cooperative requested an effective date as soon as practical. The Examiner interpreted the proposed effective date to be July 18, 1989, which is 35 days after the filing of the application with the Commission. On June 23, 1989, Examiner O'Connell suspended the operation of the proposed schedule for 150 days or December 15, 1989.

On July 5, 1989, a prehearing conference was held with Examiner O'Connell presiding. Mr. Campbell McGinnis appeared on behalf of the Cooperative and Ms. DeAnn Walker appeared on behalf of the Commission's General Counsel.

Stamford published notice of its application in this docket for four consecutive weeks in June and July, 1989, in *The Western Observer*, *The Abilene Reporter-News*, *The Twin Cities News*, *The Stamford American*, *The Haskell Free Press*, *The Hamlin Herald*, and *The Throckmorton Tribune*. Stamford also mailed notice of the proposed change to each of its customers in June and July, 1989. Stamford provided proof of

notice through publishers' affidavits and affidavits from the Cooperative's General Manager, Jerry Terrell.

On August 22, 1989, the docket was reassigned to the undersigned 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").

On August 24, 1989, General Counsel filed memoranda recommending approval of Stamford's application. On the same date, Stamford and General Counsel filed an agreement between the parties stating that the parties had stipulated to the approval of the application.

The ALJ requested additional information regarding the financial impact of the proposed changes on the Cooperative. The parties provided sufficient written information and, as a result, the ALJ did not find it necessary to convene a hearing on the merits.

On October 4, 1989, Stamford filed its proposed revised tariff.

III. Jurisdiction

Stamford sells and furnishes retail electricity and, therefore, 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). The Commission has original jurisdiction over the application in this docket pursuant to §§ 16, 17(e), 37, 38, and 43(a) of PURA. The Cooperative simultaneously filed with the City of Stamford a Statement of Intent requesting approval of the proposed changes in its line extension policy. The City approved the proposed changes.

IV. Discussion and Recommendation

A. The Cooperative's Proposal

In this application, Stamford is requesting approval to amend its overhead line extension tariff. The proposed changes would decrease its line extension charges for oil field service, barns, hunting cabins, lake cabins, and irrigation by providing line extension free of charge up to specific distances. The Cooperative also proposes to establish a new line extension policy for large industrial service. Each change is more fully discussed below. The primary consideration justifying the proposed change is the Cooperative's desire to afford relief to persons requesting new extensions. The Cooperative states that there will be no revenue effect to its annual revenues as a result of the proposed changes.

1. Oil Field Service Line Extension

The Cooperative proposes to amend its policy for oil service so that the Cooperative builds the first 1,320 feet of line without charge to the customer. Stamford's current tariff requires the customer to pay for the entire cost of any extension. The Cooperative proposes this change to bring the oil field class more in line with the "free extension" for its permanent homes and commercial businesses. The Cooperative also recognizes that there is some difference in the risk of the length of time the oil field service will remain revenue producing. Testifying on behalf of the Cooperative, Mr. Jerry Terrell stated that it had been the Cooperative's experience that permanent homes and businesses generally remain revenue producing in most instances for 20 to 30 years. In contrast, Mr. Terrell testified that oil field services are remaining active, and therefore revenue producing, for only 5 to 10 years. As a result, the Cooperative's ability to recoup its investment from oil field services has diminished and, accordingly, the Cooperative has reflected this risk in a shorter proposed free extension of only 1,320 feet. In 1988, the average extension to this class of customer was 987 feet.

2. Barns, Hunting Cabins, and Lake Cabins

The Cooperative proposes two changes with respect to these structures: (1) establish a separate class of service related only to barns, hunting cabins, and lake cabins; and (2) extend new electrical lines up to 660 feet without charge to the customer. In Stamford's current tariff, these customers have previously been a part of another class for which the Cooperative extended lines free of charge only up to 125 feet.

Mr. Terrell testified that the proposed changes are appropriate because these types of structures generally are more permanent and have a greater potential for revenue than the other services previously grouped together, such as security lights, water pumps, and signboards. Accordingly, the Cooperative proposed to establish this separate class. In Mr. Terrell's opinion, the intermittent use of barns, hunting cabins, and lake cabins justified a relatively shorter free extension of 660 feet. In 1988, the average line average extension for these structures was 326 feet.

3. Irrigation

The Cooperative proposes to revise its tariff to authorize it to build 1,320 feet of overhead line without charge to new customers, whereas the current tariff entitles a new irrigation customer to only 350 feet of free extension. The Cooperative proposes this change in order to bring irrigation customers more in line with Stamford's permanent homes and business class. Stamford restricted the free extension to 1,320 feet because of the limited seasonal use of irrigation facilities. The average extension in 1988 for irrigation customers was 390 feet.

4. Large Industrial Service

The Cooperative proposes to establish a new line extension policy for large industrial service. Stamford does not currently have a line extension policy applicable to large industrial consumers nor does it have any potential large

industrial customers. However, as Mr. Terrell testified, in order to be adequately prepared, Stamford proposes a new policy for this class of customers that would allow charges to be established on a customer-by-customer basis. The Cooperative believes maximum flexibility is critical, given the nature of large industrial service. Thus, Stamford proposes to evaluate the revenue potential, amount of investment, and risk for each industrial customer. Upon review of each case, the Cooperative proposes to charge a contract minimum or aid to construction as may be appropriate. Under the proposed tariff, the large industrial customer shall be required to pay in advance the actual cost of all construction for the proposed lines in excess of the free extension limits. The actual construction costs will be based on the Cooperative's latest adjusted standard unit costs. There is no formula or rate set out in the tariff.

5. Clarification of "Permanent Homes, Commercial Business"

The Cooperative proposes language to clarify these terms to delineate that the term "commercial business" also must be "permanent." The change is only a minor clarification.

B. Cooperative's Justifications and Revenue Impact

[1] Stamford established that its primary consideration for the requested changes is a desire to afford relief to persons requesting new extensions. Apparently the Cooperative recognized that its existing policy was quite burdensome because it had a very short length of free extension combined with an advance payment requirement.

The Cooperative also established that circumstances have changed since the current policy was approved by the Commission in July 1983. At that time, the Cooperative anticipated a high plant growth rate which would have intensified the demand for capital requiring contributions in aid of construction. However, the Cooperative's plant growth has dropped sharply as a result of the general decline in the Texas economy. The Cooperative now believes that it is no longer necessary for customers to bear as large a portion of the total cost of construction. According to Mr. Terrell, the Cooperative is hopeful that the

proposed line extension policy will encourage economic growth in the service area.

The Cooperative established that there would be no change in its annual revenues. Charges for line extension are not shown on the Cooperative's income statement, but rather currently appear as contributions in aid of construction as an offset to the cost of plant on the balance sheet. Thus, test year revenues (income) would be unaffected by the proposed changes in line extension policy.

The ALJ requested additional information related to the impact of the proposed changes on the Cooperative's cost to provide the service and on the financial integrity of the Cooperative. Through a joint response, the parties established that the proposed changes would have little or no consequential effect on either the Cooperative's cost of service or its financial integrity.

The ALJ finds that the impact on the Cooperative's cost of service is minimal and, therefore, will have no significant or immediate impact on the Cooperative's customers. While the cost of providing service to its customers will change, there will be no effect on current rates. Mr. Terrell testified that the proposed changes in line extension policy would not affect the cost of providing service to existing customers who do not require additional extensions of electric service facilities. The line extension costs for current customers were fixed under the current tariff at the time lines were constructed. Under the proposed changes, the Cooperative will probably experience a slight increase in depreciation costs. Mr. Terrell estimated that the annual revenue requirement associated with additional plant investment and depreciation expense under the proposed changes is approximately $5,662 or .127 percent of the cost of service allowed in the Cooperative's last rate case. Mr. Terrell also observed that the effect on future rates could even be lower than this calculation would suggest if the new policy has the effect of stimulating sales from new services.

The ALJ further finds that the proposed changes will not have a substantial effect on the Cooperative's Times Interest Earned Ratio ("TIER") or Debt Service Coverage Ratio ("DSC"). Both ratios are financial indicators 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 TIERs for the last three years of operation. TIER is the sum of margins plus expense divided by interest expense. In this formula, margins are the rough equivalent of net income. As a result of the proposed changes, the Cooperative's net margins will decrease to the extent of any depreciation expense necessary to amortize the Cooperative's increase in plant investment. Mr. Terrell calculates the Cooperative's estimated TIER to be 1.80X. If the proposed changes are taken into consideration, Mr. Terrell estimated the TIER to be 1.79X, thereby confirming the minimal potential impact of the proposed changes.

Likewise, the Cooperative's DSC ratio would not change. The Cooperative must maintain a DSC of 1.25X. This ratio is intended to show the Cooperative's ability to pay its principal and interest; it is a cash flow measurement. DSC is a ratio of margins plus interest plus depreciation and amortization expenses divided by the debt service expenses. Mr. Terrell calculated the Cooperative's DSC to be 2.31X. In his opinion, the DSC would not be affected because the increase in depreciation and amortization expenses (numerator) increase by the same amount the margins decrease (numerator). Thus, the changes are merely an offset and there would be no change in the DSC ratio.

Finally, the ALJ finds that there will be no effect on the equity ratio because the Cooperative intends to fund the additional plant additions with internally generated cash. Consequently, the Cooperative does not intend to borrow additional capital.

C. General Counsel's Position

The General Counsel and Staff reviewed the application and recommended approval on the basis that the application was in conformance with the Commission's substantive rule relating to new construction, P.U.C. SUBST. R. § 23.44.

D. Recommendation

Based on the evidence presented by the Cooperative and General Counsel, the ALJ recommends approval of the proposed revisions to Stamford's overhead line extension policy related to oil field service, barns, hunting cabins, lake cabins, irrigation service, and permanent homes and commercial businesses. The ALJ concludes that the Cooperative provided evidence to support these portions of the application and that these proposed changes are in the public interest.

[2] The ALJ recommends that the Commission deny the Cooperative's proposal for a new line extension policy for large industrial service. While the Cooperative argues that it needs maximum flexibility to set a charge for this class of customer, the ALJ believes that the proposed language should be rejected for the following reasons: (1) the proposed language does not set out rates and all rules and regulations affecting the line extension charges as required by § 32 of PURA; (2) the proposed language does not establish rates for line extension service with sufficient certainty to find that the rates are just, reasonable and nondiscriminatory; and (3) the proposed language allows the Cooperative to charge an additive above actual construction costs based on subjective factors that can be exercised differently in each situation. The ALJ has no reason to believe that the Cooperative would apply this tariff language improperly; however, because of the lack of specificity and safeguards, the ALJ cannot find that the provision is in the public interest.

The first problem with the proposed language is that it does not show rates and all rules and regulations affecting the line extension charges as required under § 32 of PURA. The Cooperative proposes a minimum charge of actual construction costs based on the Cooperative's latest adjusted standard unit costs. There are no provisions defining these unit costs. However, the real problem occurs when the Cooperative exercises its authority to charge an

additional amount based on its evaluation of estimated revenues, investment, risk and "other factors" on an individual customer basis. This language does not adequately delineate the factors to be considered, the weighting of each factor, or the costs that might be associated with each factor. In the ALJ's opinion, § 32 of PURA was adopted in order to ensure the tariffs were specific enough to provide effective oversight by regulatory authorities and to provide a potential or current customer with sufficient information to determine if it desired a particular service at a set price. This language lacks specificity and, consequently, should not be adopted.

Secondly, the ALJ finds that the proposed language does not set out the rates with reasonable certainty in order for the Commission to determine if or to find that the proposed rates are just, reasonable and nondiscriminatory. See § 38 of PURA. Due to the lack of specificity in the tariff and due to the significant amount of subjective evaluation to be done by the Cooperative, the Commission has no factual basis to determine if a charge for this service is just and reasonable. The only justification provided by the Cooperative for this provision is to allow maximum flexibility to work with a large industrial customer. This reason, however, does not provide factual or legal bases for the required findings under § 38 of PURA. Further, there is no basis provided to ensure that the Cooperative's evaluation is nondiscriminatory or that the factors will be consistently applied. The Commission previously rejected language that did not provide a set fee or a basis for determining the set fee. See, Application of Nueces Electric Cooperative, Inc. for a Rate Increase, Docket No. 3936, 7 P.U.C. BULL. 537, 546-7 (November 13, 1981) (Commission required a set fee for trip charges to ensure that customers knew what trip fee should be; to prevent overcharging; and to reduce the possibility of discriminatory charges.)

The final reason that the ALJ recommends that this provision be rejected is that the proposed tariff would allow the Cooperative to charge an additive above actual construction costs based on fairly subjective factors. The language places the discretion solely with the Cooperative and leaves little ability of a customer to participate in the process. The use of additives above actual costs on line extension policies has been previously rejected

because of a desire to make the provision of this service cost-based. See, Application of Lyntegar Electric Cooperative, Inc. for a Rate Increase, Docket No. 2988, 6 P.U.C. BULL. 498, 506.8 (June 12, 1980). In Docket No. 2988, the Commission rejected additives for line extension because the total amount paid by any given customer might or might not correlate to the actual capital costs involved in extending service. While there were other problems associated with Lyntegar Cooperative's line extension policy in that docket, the same principal is applicable to Stamford's proposal. The final amount that a customer would pay, which cannot be discerned from the tariff, may or may not have any relation to the actual costs associated with the provision of service. In the ALJ's opinion, this form of additive based on the Cooperative's evaluation of perceived risks and "other factors" does not provide cost-based rates over which the Commission or the customer would have any control.

V. 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. Stamford Electric Cooperative, Inc. ("Stamford" 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 ("Commission").

2. Stamford purchases all of its energy in bulk wholesale, and does not engage in generation.

3. The Cooperative provides retail electric utility service in the counties of Jones, Haskell, Shackleford, Stonewall, Throckmorton, and Fisher, Texas.

4. On June 13, 1989, the Cooperative filed a Statement of Intent to change certain service rules and regulations relating to line extensions, including establishment of a new line extension policy for industrial service customers.

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

6. A copy of the Statement of Intent was mailed or delivered to the appropriate officer of the City of Stamford, the only municipality affected by the proposed change. The City of Stamford approved the proposed tariff revisions.

7. Notice of the Cooperative's proposed changes in the main line extension policy was provided to the public by publication of the proposed changes in conspicuous form and place each week for four consecutive weeks in *The Western Observer*, *The Abilene Reporter-News*, *The Twin Cities News*, *The Stamford American*, *The Haskell Free Press*, *The Hamlin Herald*, and *The Throckmorton 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 within 30 days after the filing of the Statement of Intent with the Commission.

8. This docket was originally assigned to Hearings Examiner Richard O'Connell.

9. On July 5, 1989, a prehearing conference was conducted in this proceeding. Mr. Campbell McGinnis appeared on behalf of the Cooperative and Ms. DeAnn Walker appeared for General Counsel.

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

11. On August 22, 1989, the undersigned Administrative Law Judge ("ALJ") was assigned to process this application. The ALJ has read the entire record.

12. On August 24, 1989, General Counsel filed memoranda recommending approval of Stamford's application. On the same date, Stamford and General Counsel filed an agreement between the parties stating that the parties had stipulated to approval of the application.

13. The hearing on the merits was cancelled and this docket was processed administratively.

14. At the request of the ALJ, the parties provided additional information related to the financial impact of the proposed changes on the Cooperative.

15. The Cooperative's proposal to amend its line extension policy is primarily to extend the amount of line extension free of charge for the following services:

Service	Proposed Free Line Extension
Oil Field	1,320 feet
Barns, Hunting Cabins and Lake Cabins	660 feet
Irrigation	1,320 feet

16. The Cooperative also proposes to establish a new line extension policy for large industrial service, which would authorize the Cooperative to evaluate the revenue potential, amount of investment, and risk for each individual customer and negotiate the line extension charge based on a contract minimum or aid to construction as may be appropriate. The customer will be charged, at a minimum, the actual costs of construction of the new lines based on the Cooperative's adjusted standard unit costs.

17. The Cooperative proposes minor language amendments to "Permanent Homes, Commercial Business" in order to delineate that businesses included in the term "commercial business" also must be "permanent."

18. The Cooperative established that its primary consideration for the requested changes is a desire to afford relief to persons requesting new extensions.

19. The Cooperative's proposal to establish a new line extension policy does not contain specific language delineating all factors considered and costs charged to a potential customer.

20. The proposed line extension policy for large industrial customers would allow the Cooperative to charge an additive above actual construction costs based on subjective factors that can be exercised differently on a customer-by-customer basis.

21. Rates or charges for line extension policies should be set out in sufficient specificity to enable the customer to know what the charge will be; to prevent overcharging; and to reduce the possibility of discriminatory charges.

22. The proposed change will not change the Cooperative's annual revenues. Charges for line extension are not shown on the Cooperative's income statement, but rather currently appear as contributions in aid of construction as an offset to the cost of plant on the balance sheet.

23. There will be minimal impact on the Cooperative's overall cost of service as a result of the proposed changes to the line extension policy.

24. Because the charges are nonrecurring, there will be no impact on rates charged to current customers. The Cooperative does not anticipate requesting rate relief as a result of these proposed changes.

25. Stamford's Times Interest Earned Ratio and Debt Service Coverage Ratio will not be reduced below acceptable levels by the reduction in revenues that may result from Stamford's proposed changes to line extension rates, services, and regulations.

B. Conclusions of Law

1. Stamford 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").

2. The Commission has original jurisdiction over the application in this docket pursuant to §§ 16, 17(e), 37, 38, and 43(a) of PURA.

3. The notice provided by the Cooperative complies with the requirements of § 43(a) of PURA and P.U.C. PROC. R. § 21.22(b).

4. The rates and regulations proposed in Stamford's application with respect to the proposed charges to oil field service, barns, hunting cabins, lake cabins, irrigation, and permanent business are just and reasonable; are not unreasonably preferential, prejudicial, or discriminatory; are sufficient, equitable, and consistent in application to each class of consumers; and otherwise comply with the provisions of Article VI of PURA.

5. Stamford's proposed changes to the line extension policies for oil field service, barns, hunting cabins, lake cabins, and irrigation and its request for establishment of a new line extension policy for large industrial service are in the public interest.

6. With respect to the Cooperative's proposal to establish a new line extension policy for large industrial service, the Cooperative failed to meet its burden of proof to establish that the proposed rates were just, reasonable, not unreasonably preferential, prejudicial or discriminatory.

7. The Cooperative's proposal regarding the new line extension policy for large industrial service is not in the public interest.

8. The undersigned ALJ served as the lawful replacement for Hearings Examiner Richard O'Connell under § 15 of the Administrative Procedure and Texas Register Act, Tex. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1989).

Respectfully submitted,

KATHERINE K. MUDGE
ADMINISTRATIVE LAW JUDGE

APPROVED on this the 15th day of November, 1989.

MARY ROSS McDONALD
DIRECTOR OF HEARINGS

DOCKET NO. 8885

APPLICATION OF STAMFORD ELECTRIC COOPERATIVE, INC. FOR AUTHORITY TO CHANGE LINE EXTENSION POLICY	§ § §	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 application of Stamford Electric Cooperative, Inc. to modify its line extension policy for oil field service, barns, hunting cabins, lake cabins, and irrigation is **APPROVED**.

2. The application of Stamford Electric Cooperative, Inc. to establish a new line extension policy for large industrial service is **DENIED**.

3. Stamford shall file five copies of its tariff, revised in accordance with this Order with the Commission filing clerk within 20 days of the date of this Order. All parties to this docket shall have ten days from the date of that filing to file their objections, if any, to the revised tariff. Responses to objections shall be filed 15 days after the revised tariff is filed. The tariff shall be deemed approved and shall become effective upon the expiration of 20 days after filing, or sooner upon notification of approval by the Hearings Division. In the event of rejection, Stamford shall have 15 additional days to file an amended tariff, with the same review procedures again to apply.

4. All motions, applications, and requests for entry of specific findings of fact and conclusions of law, and any other requests for relief, general or specific, if not expressly granted herein are denied for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 13th day of December, 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Marta Greytok
MARTA GREYTOK

SIGNED: Jo Campbell
JO CAMBELL

SIGNED: Paul D. Meek
PAUL D. MEEK

ATTEST:

Mary Ross McDonald
MARY ROSS McDONALD
SECRETARY OF THE COMMISSION

MEMORANDUM DECISIONS

TELEPHONE

Southwestern Bell Telephone Company, Docket Nos. 7358 and 7385. Examiner's Report adopted November 8, 1989. Complaints of 976 information providers dismissed as moot.

Southwestern Bell Telephone Company, Docket No. 8529. Examiner's Report adopted August 30, 1989. Applicant's request to extend Microlink II Packet Switching Digital Service to the Laredo Exchange approved.

Knippa Telephone Company, Docket No. 8560. Examiner's Report adopted as modified on December 13, 1989. Report of the sale, transfer, and merger of Knippa to Alenco Communications, Inc. granted.

Complaint of Dewayne Eidson against GTE Southwest, Inc., Docket No. 8664. Examiner's Report adopted December 8, 1989. Complainant's request to obtain shared tenant services from GTE granted.

Industry Telephone Company, Docket No. 8666. Examiner's Report adopted September 28, 1989. Applicant's requested depreciation rates and amortization schedule approved.

Southwestern Bell Telephone Company, Docket No. 8911. Examiner's Report adopted December 13, 1989. Applicant filed a change in its tariff to comply with P.U.C. SUBST. R. 23.54 on private pay telephones.

Lake Dallas Telephone Company, Docket No. 8915. Examiner's Report adopted December 13, 1989. Applicant's request to discontinue mobile telephone service and to amend its tariff to reflect this change granted.

Industry Telephone Company, Docket No. 8987. Examiner's Report adopted December 13, 1989. Applicant's request for approval of sale of common stock granted.

ELECTRIC

Lamb County Electric Cooperative, Inc., Docket No. 8709. Examiner's Report adopted October 23, 1989. Applicant's request for authority to increase rates granted.

South Texas Electric Cooperative, Inc., Docket No. 8952. Examiner's Report adopted January 16, 1990. Applicant's request for an economic incentive rate to attract industrial customers was granted.

Petition by Sharpstown Mall Association against Houston Lighting & Power Company, Docket No. 9178. Petition dismissed for want of jurisdiction by examiner's order dated January 3, 1990.