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APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST TO RESTRUCTURE CUSTOM ASSEMBLIES OF EQUIPMENT RATES

DOCKET NO. 6636

July 22, 1986

Commission granted in part utility's request to restructure Custom Assemblies of Equipment Rates for two customers.

[1] RATEMAKING - RATE DESIGN - TELEPHONE

The Commission held that, at least when part of a custom assemblies of equipment tariff, the intercommunications and exchange access portions of Ecentrex service can be offered and priced separately.

DOCKET NO. 6636

RECEIVED

1986 JUN 30 PM 1:56

APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST TO RESTRUCTURE CUSTOM ASSEMBLIES OF EQUIPMENT RATES

PUBLIC UTILITY COMMISSION OF TEXAS

EXAMINER'S REPORT

I. Procedural History and Jurisdiction

On December 10, 1985, General Telephone Company of the Southwest ("GTSW") filed a proposed tariff revision seeking authority to restructure Custom Assemblies of Equipment rates for two customers.

On December 20, 1985, the examiner ruled that GTSW's proposal constituted a change in rates, and ordered publication of notice pursuant to Section 43(a) of the Public Utility Regulatory Act ("PURA"), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985) and P.U.C. PROC. R. 21.22(b). The proposed effective date of the rate change was invalidated due to the lack of notice, and the examiner ruled that it could be no sooner than the date upon which public notice was completed. In addition, the eventual effective date of the rate change proposal was suspended for 150 days, pursuant to PURA Section 43(d).

GTSW is a public utility as that term is defined in PURA Section 3(c)(2)(A) and (B). The Commission has jurisdiction over this matter pursuant to PURA Sections 18(b) and 43(a).

On January 7, 1986, GTSW moved that this docket be "demoted" from a docket to a simple tariff filing, arguing that while the restructuring would in fact constitute a change in rates, the revenue effect would be a decrease in revenues. GTSW noted that, with the revenue impact being a decrease, the proposal was not a "major change" under PURA Section 43(b), and thus under the PURA and its own rules, the Commission had the discretion to treat the matter as a tariff filing, rather than as a docketed proceeding.

At a prehearing conference held on January 8, 1986, the examiner renewed his rulings that the rate restructuring should be kept as a docketed proceeding, and that public notice was necessary, as PURA Section 43(a) requires notice for any change in rates. No hearing date was set as there had been no request for a hearing. The staff was, however, ordered to file its recommendations by April 11, 1986.

On January 10, 1986, the general counsel filed her answer, and as an item therein submitted that GTSW should be required to file a rate filing package pursuant to P.U.C. PROC. R. 21.69(a). On February 7, 1986, GTSW filed a reply to that portion of the general counsel's answer, and urged its rejection. The issue in question was present in another docket (Docket No. 6387, Application of General Telephone Company of the Southwest to Revise its ECENTREX Tariff), with the Commission to make a decision on the issue based upon the Examiner's Report

submitted therein. The examiner thus deferred a decision on the issue until the Commission could rule upon it in Docket No. 6387, which ruling took place on March 5, 1986. The Commission's ruling was, inter alia, that P.U.C. PROC. R. 21.69(a) required a full rate filing package anytime there was a change in rates, unless good cause could be shown to modify that requirement, as allowed by subsection (d) of that rule. Nine factors were set out by the Commission to be considered when dealing with the question as to whether or not good cause for an exception exists.

On April 7, 1986, GTSW moved for a good cause exception to the rate filing package requirements of P.U.C. PROC. R. 21.69(a), and the examiner set a 10 day response deadline for replies to that motion. On April 17, 1986, the general counsel filed her reply, and agreed with GTSW that good cause for an exemption from the rate filing package requirements of P.U.C. PROC. R. 21.69(a) had been shown. On April 22, 1986, the examiner ruled that good cause for an exemption existed, and relieved GTSW from complying with the requirements of the rule.

Having decided that a rate filing package was not required, a proposed effective date could be established. GTSW had completed public notice on February 23, 1986, and that was the date set. The 150 day suspension period thus ends on July 24, 1986.

GTSW filed its testimony on April 16, 1986. The staff, after receiving an extension in its filing deadline, filed its recommendations on April 29, 1986. On May 23, 1986, the staff filed a revised recommendation, updating its recommendation to reflect information received after its initial recommendation was filed. GTSW was given the opportunity to reply to the revised recommendation, but chose not to do so.

There have been no motions to intervene or requests for a hearing in this docket. Thus, the examiner has processed the docket administratively, and the recommendations that follow are based upon GTSW's prefiled "testimony", the recommendations filed by the staff, and the applicable tariff sheets on file with this Commission.

II. Opinion

In this filing GTSW proposes to revise the Custom Assemblies of Equipment tariffs for North Texas State University ("NTSU") and Angelo State University ("ASU"). The revisions consist of basically three changes: a restructuring of the Ecentrex rates; replacement of the extension station charge at NTSU with a one-time wiring charge; and a reversion of the NTSU and ASU dormitory services from Ecentrex service to ordinary residential one-party service. Each of the changes will be discussed below. The revenue impacts associated with the changes can be found on attached Exhibit I. The total revenue impact of the examiner's recommendations is an annual decrease of $194,482.40.

A. Ecentrex Restructure

The current Ecentrex rate levels for NTSU are $20.00 for the first 200 stations, $10.50 for the next 200 stations, and $4.50 for each station over 400. A $10.20 exchange access rate--$6.60 for stations ordered or established after July 27, 1983--also applies to each station. ASU, on the other hand, is presently paying a flat rate of $21.15 for Ecentrex stations ($17.55 for stations ordered or established after July 27, 1983). Under GTSW's proposals, the station rate for both universities would be a bundled, flat rate of $14.75 ($11.15 for stations ordered or established after July 27, 1983).

GTSW conducted an avoided cost study for the GTD-4600 switches which provide Ecentrex service, and concluded that the decreased rates will continue to recover all avoided costs. Avoided costs studies are generally used for obsolete or dying services, and they calculate the maintenance, administrative costs, and miscellaneous taxes that would be avoided if the service were discontinued. Avoided cost studies do not include capital costs which are considered "sunk". Thus, as long as the rates cover the avoided costs, the company is recovering all of its ongoing costs, insuring that the general body of ratepayers will not subsidize a competitive service. The staff agreed that the use of an avoided cost study was appropriate in this case since the GTD-4600 switching equipment is recognized as being technologically obsolete.

The staff reviewed GTSW's avoided cost study, and recommended approval of the company's proposal, with one exception. That exception is with regard to "fully restricted" Ecentrex lines. Staff engineer David Featherston stated that 425 of NTSU's 2026 Ecentrex lines are fully restricted. As such, they can only access other lines on the NTSU Ecentrex system, and access to the outside world is restricted. If the application is approved as filed, stations with restricted access will pay the same rate as stations with unlimited access, increasing the restricted access rate from $4.50 to $14.75. Although NTSU did not intervene in this docket, Mr. Featherston indicated that NTSU was opposed to this part of the Ecentrex restructure.

In their negotiations in 1982, NTSU and GTSW agreed that, since restricted Ecentrex stations cannot access the local exchange network, no exchange access charge would be levied. GTSW now, according to Mr. Featherston, indicates that its 1982 statement to NTSU was in error, that it is unwilling to continue billing the $4.50 restricted Ecentrex rate, that the intercommunication and exchange access portions of Ecentrex service are not offered separately, and that the rate for restricted stations should be the same as main Ecentrex stations.

As Mr. Featherston notes, the Custom Assemblies of Equipment section of a tariff represents customer specific arrangements and it is reasonable to assume that negotiations can and should occur between the parties. The agreements

should then be reflected in the company's tariff in accordance with the PURA and the Commission's Substantive Rules. In this case, GTSW's tariff did not and does not provide for a lower, restricted Ecentrex rate, and explicitly states that the intercommunication and exchange access portions of Ecentrex service are not offered separately. But in keeping with its agreement with NTSU, GTSW has for over four years billed those restricted stations at the $4.50 rate.

[1] The examiner agrees with Mr. Featherston that the restructure of Ecentrex rates should be approved as modified to include a tariff provision explicitly providing for a $4.50 rate for all present and future fully restricted Ecentrex stations. Such a provision simply memorializes what GTSW originally agreed to, and what it has in fact been doing for over four years. The examiner does not see why, at least in a custom assemblies of equipment tariff, the intercommunications and exchange access portions of Ecentrex service cannot or should not be offered separately. In fact, in 1983 GTSW made a similar arrangement for NTSU dormitory service, so that the university would not have to pay the $12.00 exchange access rate when dormitory students were away for the summer. Mr. Featherston states that, even at the $4.50 restricted access rate, the avoided costs for the Ecentrex service will continue to be covered by the average rates. Finally, the examiner would note that the revenue impact of this change will result in only an additional $255.00 revenue decrease to GTSW's total projected revenue decrease resulting from all of the tariff revisions sought in this docket of $194,228.40.

In sum, the Ecentrex restructure proposed by GTSW, as revised to include a provision for a $4.50 monthly rate for fully restricted Ecentrex stations for NTSU, will result in revenues in excess of avoided costs, is reasonable, and should be approved.

B. Extension Station Access Charge

GTSW currently charges a $0.65 per month Extension Station Access Charge for 317 instruments at NTSU. This rate was designed to recover inside wiring costs, and will be replaced with the one-time wiring charge found in Section 13 of GTSW's tariff--currently $25.50. The charge will apply only to new Ecentrex inside wiring. The staff did not object to this provision, and the examiner finds the change from a recurring rate to a one-time charge to be reasonable, as a one-time charge provides a more timely, more accurate recovery of costs.

C. Dormitory Service

GTSW proposes to change the NTSU dormitory service from Ecentrex service to standard, residential one-party service. GTSW also proposes to remove the option of Ecentrex service to ASU dormitory students, leaving available only standard one-party residential service. GTSW indicates that the latter proposal is in response to a request by ASU, but does not address the NTSU change. The

staff addresses only the change at NTSU, and does not object to it, but raises several issues regarding possible past overbillings. By order dated May 19, 1986, the examiner ruled that those issues were outside the scope of this docket and, rather than severing those issues into a new docket, left it to the general counsel's discretion as to whether or not an inquiry should be filed.

The examiner finds the proposals to be reasonable. He would note that no revenue impact has been presented concerning the ASU change, and thus must assume that there are no ASU dormitory Ecentrex subscribers. To the extent there are subscribers, they would see a decrease in rates, unless they subscribe both to touch call service and extended area service ("EAS"), in which case there would be a slight (40¢) monthly increase.

D. Miscellaneous

1. EAS

EAS, where available, is included as part of the Ecentrex offering at no additional charge. For standard residential service, the EAS rate is in addition to the applicable one-party rate.

2. Minimum Requirements

In his prefiled testimony, at page 3, GTSW Tariff Administrator Johnny L. Rogerson, Jr. states that the Ecentrex restructure will "[e]liminate minimum requirement of 100 ECENTREX stations." The proposed tariff for NTSU includes the following language:

> The minimum charge for ECENTREX service, served by electronic central office switching equipment located on telephone company premises, excluding extension ECENTREX stations and other chargeable items of equipment or service, per ECENTREX system shall be at the rate applicable to 100 ECENTREX stations at the primary location.

Identical language is found in GTSW's current tariff. No other language in the curent or proposed tariffs deal with any type of minimum requirement or exemption therefrom. As for ASU, no language is presently in the tariff concerning any minimum requirement.

The examiner is somewhat at a loss as to how to harmonize Mr. Rogerson's testimony with the proposed tariffs he is sponsoring. The examiner believes that what is found in the proposed tariff is what is operative, and thus would conclude that the proposed changes do not alter any current minimum requirements for NTSU, or the absence of such requirements for ASU.

III. 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 December 10, 1985, GTSW filed a proposed tariff revision seeking authority to restructure Custom Assemblies of Equipment rates for NTSU and ASU.

2. GTSW is a public utility as that term defined in PURA Section 3(c)(2)(A) and (B).

3. On December 20, 1985, the examiner ruled that GTSW's proposal constituted a change in rates, and ordered publication of notice pursuant to PURA Section 43 and P.U.C. PROC. R. 21.22(b).

4. GTSW completed proper public notice, made pursuant to PURA Section 43(a), on February 23, 1986, and that date became GTSW's proposed effective date. The proposed effective date, having been suspended on December 20, 1985 for 150 days pursuant to PURA Section 43(d), now falls on July 23, 1986.

5. There have been no motions to intervene or requests for a hearing in this docket. Thus, the examiner has processed the docket administratively, and the recommendations herein are based upon GTSW's prefiled "testimony", the recommendations filed by the staff, and the applicable tariff sheets on file with this Commission.

6. An avoided cost study, which does not consider recovery of capital costs considered to be sunk, is an appropriate mechanism upon which to base rates for obsolete or dying services.

7. Ecentrex service is a dying service provided by technologically obsolete GTD-4600 switches.

8. GTSW's avoided cost study was performed in a reasonable manner and is a reasonable basis upon which to design rates.

9. GTSW's proposed Ecentrex rates will more than recover the avoided costs associated with the provision of such service.

10. "Fully restricted" Ecentrex lines can only access other lines on that particular Ecentrex system, and access to the local exchange network is restricted.

11. NTSU has 425 fully restricted Ecentrex lines.

12. Despite tariff language stating that the intercommunications and exchange access portions of Ecentrex service are not available separately, GTSW has honored a 1982 agreement with NTSU and charged NTSU only $4.50 per month for its fully restricted Ecentrex lines.

13. Even at a $4.50 per month rate for NTSU's fully restricted Ecentrex lines, the cost of providing Ecentrex service will continue to be recovered by the Ecentrex rates as a whole.

14. It is not unreasonable for the intercommunications and exchange access portions of Ecentrex service to be offered separately in a custom assemblies of equipment tariff.

15. The revenue impact of continuing the $4.50 per month charge for fully restricted Ecentrex lines will result in only an additional annual revenue decrease of $255.00 beyond that proposed by GTSW.

16. Based upon the four preceding findings of fact, it is reasonable for NTSU to be charged only $4.50 per month for each of its fully restricted Ecentrex lines, and the tariff should explicitly include such a provision.

17. Based upon the eleven preceding findings of fact, the Ecentrex restructuring proposed by GTSW, as modified by Finding of Fact No. 16, is reasonable and should be adopted. The rates are as shown on Exhibit I.

18. GTSW currently charges a $0.65 per month Extension Station Access Charge for 317 instruments at NTSU, which was designed to cover inside wiring costs.

19. Replacement of recurring charges with non-recurring charges is reasonable in that one time charges more closely match revenues with costs, and they do so in a more timely manner.

20. Based upon the preceding finding of fact, GTSW's proposal to replace its Extension Station Access Charge with the one-time wiring charge found in Section 13 of its tariff (currently $25.50) is reasonable. The Section 13 wiring charge will apply only to new Ecentrex inside wiring.

21. GTSW's proposal to change the NTSU dormitory service from Ecentrex service to standard, residential one-party service is reasonable.

22. GTSW's proposal to remove the option of Ecentrex service for ASU dormitory students, leaving available only standard, residential one-party service, is reasonable.

23. The issue of possible past overbilling by GTSW was determined to be outside the scope of this docket by Examiner's Order dated May 19, 1986.

24. EAS, where available, is included as part of the Ecentrex offering at no additional charge. For standard residential service, the EAS rate is in addition to the applicable one-party rate.

25. The minimum requirements for Ecentrex service for NTSU currently found in GTSW's tariffs will not be changed as a result of this docket.

26. The net revenue impact from the proposals recommended herein is an annual revenue decrease of $194,482.40, as detailed on Exhibit I.

B. Conclusions of Law

1. The Commission has jurisdiction over these matters pursuant to PURA Sections 18(b) and 43(a).

2. Based upon Findings of Fact Nos. 6 through 26, the rate change proposals put forth by GTSW, as modified by Finding of Fact No. 16 and as clarified by Finding of Fact No. 25, are just and reasonable, and otherwise in compliance with PURA Sections 38, 40, 45 and 46, and should be approved.

Respectfully submitted,

Howard V. Fisher

HOWARD V. FISHER
HEARINGS EXAMINER

APPROVED on this the 27th day of June 1986.

Rhonda Colbert Ryan

RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

nsh

DOCKET NO. 6636
GENERAL TELEPHONE COMPANY OF THE SOUTHWEST
PROPOSED RATES AND REVENUE IMPACT

EXHIBIT I

DESCRIPTION	UNITS 11/30/85	PRESENT RATE	EXAMINER'S PROPOSED RATE	ANNUAL REVENUE INCREASE/(DECREASE)
1. NTSU Ecentrex Service				
A. Base Station Rate				
NT ECX MS 1-200	200	$20.00	$14.75	$(12,600.00)
NT ECX MS 2-200	199	10.50	14.75	10,149.00
NT ECX MS 0-400	1202	4.50	14.75	147,846.00
Fully Restricted Lines	425	4.50	4.50	0
B. Exchange Access Rate				
NT ECX S	1295	10.20	0	(158,508.00)
NT ECX S ACC	306	6.60	0	(24,235.00)
Fully Restricted Lines (no exchange access available)	425	0	0	0
2. NTSU Dormitory Ecentrex Service*				
A. Base Station Rate (TX DORM ACC)	2103	12.00	11.05**	(23,974.00)**
B. Exchange Access Rate	2103	4.50	0	(113,562.00)
3. Extension Station Access Charge (wiring) NT ECX X	317	0.65	0	(2,472.00)
NTSU SUBTOTAL				$(177,356.00)
4. ASU Ecentrex Service				
ASU ADM MAIN STA	152	21.15	14.75	(11,673.60)
ASU ADM MAIN STA ACC	71	17.55	11.15	5,452.80
ASU SUBTOTAL				$(17,126.40)
TOTAL REVENUE IMPACT				$(194,482.40)

*-Ecentrex service to be replaced by single party residential service.

**-Includes optional $2.00 Touch Call Additive. If all subscribers rejected the Touch Call Additive, the proposed rate would be $9.05, and the revenue impact would be a decrease of $74,446.20.

DOCKET NO. 6636

1983 JUL 22 PM 1:20

APPLICATION OF GENERAL TELEPHONE COMPANY OF THE SOUTHWEST TO RESTRUCTURE CUSTOM ASSEMBLIES OF EQUIPMENT RATES

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 by an examiner who prepared and filed a report containing Findings of Fact and Conclusions of Law, which Examiner's Report is adopted and made a part hereof. The Commission further issues the following Order:

1. The application of General Telephone Company of the Southwest ("Company") is hereby granted in part, as reflected by the terms of the Examiner's Report.

2. Company shall design rates in accord with this Order. Within 10 days after the date of this Order, the company shall file with the Commission five copies of all pertinent tariff sheets revised to incorporate all the directives of this Order. No later than 5 days after the date of the tariff filing by Company the general counsel shall file the staff's comments recommending approval or rejection of the individual sheets of the tariff proposal. The Hearings Division shall by letter approve or reject each tariff sheet, effective the date of the letter, based upon the materials submitted to the Commission under the procedure established herein. The tariff sheets shall be deemed approved, and shall become effective upon expiration of 10 days after the date of filing, in the absence of written notification of approval or rejection by the Hearings Division by that time. In the event that any sheets are rejected, Company shall file proposed revisions of those sheets in accordance with the Hearings Division letter within 5 days after that letter, with the review procedures set out above again to apply.

3. All requests for relief not expressly granted herein are denied for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 22nd day of July 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

SIGNED: _____
JO CAMPBELL

ATTEST:

for _____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

nsh

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	DOCKET NOS. 6477 and 6525

December 2, 1985

Proposal for Decision adopted with modifications, and plant in service portion of rate case dismissed.

[1] PROCEDURE - PLEADINGS - SUFFICIENCY

The Commission may dismiss a rate case without a hearing if the application does not comply with the test year requirements of PURA or the Commission's rules.

[2] PROCEDURE - PLEADINGS - SUFFICIENCY

The word "available" in PURA Section 3(t) means that the test year used must be the most recent twelve months of operating data, commencing with a calendar or fiscal year quarter, which the public utility could have used in preparing its application in compliance with the requirements of applicable law and filing it on the date filed.

[3] PROCEDURE - PLEADINGS - SUFFICIENCY

In light of circumstances, including a recent change in rate filing package requirements, the Commission did not dismiss a rate case in which a six-month-old test year had been used.

[4] PROCEDURE - PLEADINGS - SUFFICIENCY

Dismissal of a rate case filing is not justified simply because it includes one proposal which is based on projected, rather than historic, data.

[5] PROCEDURE - PLEADINGS - SUFFICIENCY

Where a utility with a nuclear power plant not yet in service at the end of the test year filed alternate filings requesting inclusion of the power plant costs in rate base as CWIP and as plant in service, the Commission dismissed the plant in service filing without a hearing.

DOCKET NOS. 6477 AND 6525

1985 NOV 15 PM 3:42
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION FILING CLERK

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	*	PUBLIC UTILITY COMMISSION
	*	OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	*	

PROPOSAL FOR DECISION CONCERNING
OFFICE OF PUBLIC UTILITY COUNSEL'S
MOTION TO DISMISS

I. Background and Procedural History

On October 1, 1985, Gulf States Utilities Company (GSU) filed a statement of intent to increase its rates within the unincorporated areas served by it. GSU is seeking authorization to increase its rates by $89,601,486, or 10.8 percent in the first year (the Step I increase) and $87,790,277 or 9.55 percent in the second year (the Step II increase), or a total of $177,391,763, or 21.4 percent, over total Texas adjusted test year revenues, assuming Commission recognition of River Bend Unit 1 as plant-in-service. GSU termed this part of its request its "Primary Filing". In the alternative, should the Commission exclude River Bend Unit 1 from GSU's plant-in-service, GSU is seeking authorization to increase its rates by $110,181,957, or 13.28 percent over total Texas adjusted test year revenues. GSU termed this part of its request its "Alternate Filing".

On October 4, 1985, the Office of Public Utility Counsel (OPC) filed a motion to dismiss the rate case.

On October 15, 1985, GSU filed a response to OPC's motion to dismiss.

The motion was orally argued at the first prehearing conference in this docket, which was held on October 21, 1985. In oral argument, OPC and the intervenor Cities argued in favor of the motion to dismiss. The State Agencies expressed agreement with the motion. The Commission's general counsel indicated that it did not oppose the motion and presented argument in support of its position. GSU argued against the motion.

The examiner recommends that OPC's motion to dismiss be granted in part and denied in part. Specifically, the examiner recommends dismissal of GSU's Primary Filing, including both the Step I and Step II rate increase requests. The examiner recommends that GSU's Alternate Filing not be dismissed, but rather that it be processed in accordance with the existing procedural schedule, unless later modified.

It should be noted that the nature of the present order is unusual and probably perplexing for the reasons described below. The complexity is due to the resolution of OPC's motion that the examiner has reached. She has tried to issue a proposal for decision which she hopes will minimize confusion and inconvenience for the Commission and the parties.

Ordinarily, denial of a motion to dismiss is handled by examiner's order, which a party can appeal to the Commission. Granting a motion to dismiss is accomplished by an Examiner's Report recommending dismissal which automatically is forwarded to the Commission for a final order. Since the examiner recommends granting in part and denying in part the motion to dismiss, this proposal for decision has elements of both. The examiner considered issuing an order denying in part OPC's motion to dismiss and an Examiner's Report recommending granting in part OPC's motion to dismiss. She rejected this approach for the following reasons. First, the issues are interconnected and probably should be considered as a whole. Second, they are sufficiently important that the Commission probably should pass on them whether an appeal is filed or not. Third, issuing an Examiner's Report in consolidated Docket Nos. 6477 and 6525 would be very confusing if part of the case is not dismissed and another Examiner's Report is subsequently issued in the same dockets. Alternatively, the examiner could sever the part of these dockets which she recommends be dismissed, have a new docket number assigned to that part and issue an Examiner's Report recommending dismissal of the new docket. There are two problems with this approach. First, if only an unfamiliar docket number appeared at the top of such an Examiner's Report, parties might not be put on notice of the implications of the decision. Second, if the Commission reached a different resolution of the various counts than did the examiner, the case might have to resevered or consolidated or both. It is confusing enough as it is.

For these reasons, the examiner decided instead to issue a proposal for decision containing both sets of recommendations, the entirety of which will automatically be submitted to the Commission without the necessity of a party filing an appeal. Deadlines are set for the filing of "exceptions" and "replies to exceptions" to the entirety of the examiner's recommendations. This nomenclature is used to prevent the parties from having to file appeals and responses thereto and exceptions and replies to exceptions.

To the extent that the Commission dismisses the case or part of the case, its order should be considered final with respect to the case or that part of the case which is dismissed. To the extent that the Commission fails to dismiss the case or part of the case, its order should be considered as an interim order of the Commission denying OPC's motion to dismiss. The final order in these dockets then would of course be the Commission's decision on the merits (unless the case is otherwise resolved by some other means, such as withdrawal).

Attached to this proposal for decision are findings of fact and conclusions of law respecting those parts of the case which the examiner recommends be dismissed. If the Commission decides to dismiss part of the case which the examiner did not recommend be dismissed, supplemental findings of fact and conclusions of law should be prepared and adopted as part of the Commission's signed order.

The examiner notes that OPC's motion to dismiss was filed before Docket No. 6525, the rate case, was consolidated with Docket No. 6477, the Commission's inquiry into GSU's fuel factor. There are issues outstanding respecting GSU's fuel factor independent of the rate case. For example, Order No. 7 in this case requires implementation of fuel cost overrecovery refunds. The parties requested an opportunity to brief the issue of the applicability of the State of Texas escheat laws before an order is issued concerning the disposition of proceeds of unclaimed refunds. Accordingly, if the Commission were to decide that the entire rate request should be dismissed, the examiner recommends that Docket No. 6477 first be severed from Docket No. 6525 and outstanding issues pertaining to GSU's fuel factor and the most recent refund be considered therein, and that only Docket No. 6525 be dismissed.

II. Opinion

OPC's motion to dismiss is divided into five counts. Each count is separately discussed in this proposal for decision.

A. Count I: Dismissal of Entire Case Due to Use of Stale Test Year

The examiner recommends denial of Count I of OPC's motion to dismiss.

1. OPC's and Cities' Arguments

In the motion to dismiss, OPC argued as follows. Both GSU's Primary Filing and its Alternate Filing should be dismissed on the ground that neither is based on a statutorily valid test year. Section 3(t) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985) defines "test year" as "the most recent twelve months for which operating data for a public utility are available and shall commence with a calendar quarter or a fiscal year quarter" (emphasis added). PUC. PROC. R. 21.2 contains identical language. The Commission's authority to require that rates be based on an historic test year was affirmed in Suburban Utility Corporation v. Public Utility Commission of Texas, 652 S.W.2d 358 (Tex. 1983, reh. den.). The most recent twelve month operating period commencing with a calendar quarter prior to GSU's filing was the period October 1, 1984 through September 30, 1985. The next most recent was the period July 1, 1984 through June 30, 1985. Both GSU's filings are based on a test year April 1, 1984 through March 31, 1985.

OPC argued that the Commission has the authority to dismiss the rate case due to use of a stale test year on three grounds. First, GSU has failed to invoke the Commission's jurisdiction under Section 43(a) of the PURA, which is both a generally recognized ground for dismissal and a specific ground for dismissal without hearing under P.U.C. PROC. R. 21.82(a)(2). Second, GSU's application is incomplete, which is a specific ground for dismissal under P.U.C. PROC. R. 21.69(a). Third, GSU's petition is both moot and obsolete, which are specific grounds for dismissal under P.U.C. PROC. R. 21.82(a)(2).

Respecting the first ground, OPC further argued that GSU has invoked the Commission's jurisdiction in this case under Section 43(a) of the PURA by filing a statement of intent to change its rates. PURA Section 43(a) provides, in part, that: "the statement of intent shall include... such other information as may be required by the regulatory authority's rules and regulations". P.U.C. PROC. R. 21.69(a) requires, inter alia, that a utility's statement of intent or application include the following:

> In addition, such filing shall include annual company financial statements that have been examined and reported on by an independent certified public accountant, the date of such statements to be within the test year.... Also, the filing shall include a report on a test year review made by the independent certified public accountant that covers the test year. The required procedures for the test year review shall be included in the Commission-prescribed rate filing package. (emphasis added)

Because the test year used by GSU does not meet the definition of that term contained in Section 3(f) of the PURA or P.U.C. PROC. R. 21.2, GSU has failed to comply with the filing requirements of P.U.C. PROC. R. 21.69(a), and by reference, the jurisdictional requirements of PURA Section 43(a).

Respecting the second ground, OPC further argued as follows. P.U.C. PROC. R. 21.69(a) requires:

> In addition, the utility must complete and submit 15 copies of the commission-prescribed rate filing package and all the applicable schedules contained therein in order to complete an original filing, and failure to file such complete rate filing package shall be considered an incomplete filing, and any application or statement of intent to change rates shall be subject to being dismissed, and any time limits shall not begin to run thereon. (emphasis added)

The Commission-prescribed rate filing package (RFP) referenced in P.U.C. PROC. R. 21.69 is replete with specific requirements for "test year" data. Because the Company has failed to comply with the definition of "test year" contained both in the PURA and the Commission's rules, it has failed to comply with the filing requirements for each of these schedules, OPC contends.

OPC commented that GSU may argue that a waiver of the filing requirements of P.U.C. PROC. R. 21.69(a) is justified. P.U.C. PROC. R. 21.69(d) provides that the items required to be included in the Commission-prescribed RFP under P.U.C. PROC. R. 21.69(a) may be "modified by the Commission for good cause." GSU has not included any such good cause plea in its application, however. Moreover, P.U.C. PROC. R. 21.69(d) would not authorize the Commission to alter the Legislature's definition of the term "test year." Finally, the reason for requiring operating data for the "most recent" test year period is to assure that the Commission has the most current, accurate picture of the Company's condition possible. This rationale is even more critical in this case, given that GSU's residential rates are already the highest in Texas.

OPC further argued that in GSU's last rate case, Docket No. 5560, the same issue of the ability of the Company to file a timely case was raised in connection with the rate base treatment of the Big Cajun Plant. In response, the Company's Executive Vice President for Finance, Joseph L. Donnelly, filed rebuttal testimony which included the following claim:

> The fastest that Gulf States could be able to prepare a case is three to four months after the end of the test year. (Docket No. 5560, GSU Exhibit 47, p. 10, lines 15-17)

In this case the Company took more than six months to file its case after the test year ended even though it was aware that this timing issue would likely be raised again in this case.

In oral argument Public Counsel Jim Boyle argued as follows. It is especially important that the most current test year data be available due to changes in inflation, interest rates and productivity since the end of GSU's test year. Several utilities have filed rate cases with less stale test years. Examples are Texas Utilities Electric Company (2 months), West Texas Utilities Company (2 months and 10 days), Houston Lighting and Power Company, and Southwestern Bell Telephone Company (almost 3 months). In response to a question by the examiner, Mr. Boyle indicated that he believes the definition of "test year" in PURA Section 3(t), "the most recent 12 months for which operating data for a public utility are available" (emphasis supplied), to mean the nearest quarter by which the utility can get the RFP together. He did not mean that just because this case was filed on October 1, 1985 that GSU is required to use a test year ending September 30, 1985. Finally, when GSU extended its effective date 45 days to allow the staff to complete a prudence review for GSU's nuclear power plant, River Bend, Mr. Boyle argued that the test year is now even more stale and thus even more reason exists to dismiss the case on that basis.

In oral argument, Don Butler for the Cities stated the following. GSU always seems to file using a stale test year. Letting the utility choose what test year to use allows it to select a favorable period and puts the burden on other parties to reconstruct recent events by developing recommendations for known and measurable changes. Mr. Butler argued that the word "available" in PURA Section 3(t) does not mean that, the utility is allowed to get the data together at its convenience.

2. GSU's Arguments

GSU disagreed with OPC's argument that the rate case can be dismissed without a hearing if it appears that the requirements respecting use of a test year contained in the PURA and the Commission's rules were not complied with. GSU argued as follows. The currency of test year data does not affect the Commission's jurisdiction, nor does it make the filing moot or obsolete. Moreover, contrary to OPC's assertion, Section 21.69(a) of the Rules provides no "specific ground for dismissal." Grounds for dismissal without hearing are listed only in Section 21.82(a), and questions about test year data are not among them.

GSU further argued that the test year used in its application is "the most recent twelve months for which operating data for a public utility are available." The term "available" means that utilities are not required to do the impossible and produce a RFP instantly upon conclusion of the test year or issuance of financial statements for the test year period. Rather, the utility is given a reasonable period of time to organize such data into the format required by the Commission, and to meet the Commission's other requirements for complete application in a major rate case. GSU's petition for authority to change rates states at 11: "The test-year upon which this rate increase request is based is the 12-month period beginning April 1, 1984 and ending March 31, 1985. This test period is the most recent 12-month period for which operating data is available for the preparation of this rate increase Application." Thus GSU complied with the requirements of PURA and the Commission rules, and no waiver was needed.

GSU observed that a new RFP form was recently distributed to all electric utilities with a cover letter dated January 7, 1985 and signed by the Secretary of the Commission. That letter stated that the form "should be utilized for all test years ending December 31, 1984, or later." The new form added at least 28 new schedules to the filing package and changed or added to at least 30 existing schedules. Those new schedules, changes and additions have added significantly to the time and effort required of the filing utility. So far, only three investor-owned electric utilities, GSU, Central Power & Light Company (CP&L), and El Paso Electric Company (EPEC), have filed using the new form. None of them had the benefit of their own prior experience in

complying with the new requirements or, since all three filed within a few months of each other, of the experience of the others in any significant way. Shown below are the pertinent filing data with regard to test year for those three utilities:

Docket No.	Utility	Test Year	Filing Date	Time Elapsed
6350	EPEC	12-31-84	6-24-85	5 Mos., 24 Days
6375	CP&L	12-31-84	7-9-85	6 Mos., 9 Days
6525	GSU	3-31-85	10-1-85	6 Mos., 1 Day

Clearly, GSU's performance is well in line with that of the other two utilities.

GSU provided similar data respecting rate cases by other electric utilities filed even before the RFP form was amended. These cases, filed between June 1983 and June 1984, involved an elapsed time between test year end and rate case filing ranging from approximately two to five months.

GSU argued that the requirements for a RFP are particularly great for GSU due to the Commission's 1981 Order in a prior GSU rate case, Docket No. 3871. In that proceeding, staff witnesses Harvey L. Winkelmann and Milton B. Lee proposed that GSU be required, in future cases, to provide a cost-of-service study on a total company basis rather than on a retail Texas basis as GSU had done in that proceeding. In that case, GSU witness David N. Beekman, at page 19 of his written rebuttal testimony, stated that the staff's proposal would "substantially increase the time need to prepare a rate filing," and "would add about 2 man-months to the effort needed to prepare a rate filing." On page 20 of that testimony, he stated that "the sheer size and complexity of the filing would increase dramatically," and that "the proposed change . . . might require an additional volume of about two inches." The Commission, apparently concluding that the additional effort and regulatory lag that the staff had proposed be imposed on GSU was nonetheless appropriate, adopted the staff's proposal. (7 P.U.C. BULL. 410 at 443, 447, 450 (1981).) In Docket No. 3871, the pertinent material referred to by Mr. Beekman was contained in three volumes. In this proceeding, Docket No. 6525, the same kind of material fills five volumes in each of the two filings (Volumes 14 through 18). In Docket No. 4510, the first GSU rate case following Docket No. 3871, the elapsed time increased from four months and one day to five months and ten days. Hence, the Commission's Order in Docket No. 3871 added significantly to the time it takes GSU to meet the Commission's requirements.

GSU also argued that its position as a utility answerable to three separate jurisdictions--Texas, Louisiana and the Federal Energy Regulatory Commission--required a meticulous handling of voluminous data in order to allocate properly expenses and revenues among those three jurisdictions.

GSU provided the following data concerning its previous rate cases:

Docket No.	Test Year	Filing Date	Time Elapsed
2677	12-31-78	7-2-79	6 Mos., 2 Days
3298	12-31-79	6-17-80	5 Mos., 17 Days
3871	12-31-80	5-1-81	4 Mos., 1 Day
4510	12-31-81	6-10-82	5 Mos., 10 Days
5560	6-30-83	1-6-84	6 Mos., 6 Days

As can be seen from this history, GSU has never been able to file a case sooner than four months after the end of the test year.

GSU further stated that this particular GSU filing required an unusual amount of work. The required affirmative showing of prudence for the River Bend unit, for example, necessitated an exhaustive review and analysis of the planning for and construction of that unit. Moreover, GSU's concern regarding the Commission's possible treatment of River Bend as not constituting plant-in-service led GSU to submit two separate filings. As a result, the sheer volume of testimony and related exhibits and data filed by GSU in this proceeding is beyond anything ever filed by GSU before, consisting of forty volumes in two separate rate filing packages, with twenty-two witnesses for each, and several thousand pages of testimony, supporting exhibits and data. To suggest that this could have been accomplished any faster than it was is belied by the briefest examination of the case that GSU has presented.

With respect to Mr. Donnelly's testimony in Docket No. 5560 referenced by OPC, GSU argued as follows. Mr. Donnelly merely stated that the "fastest" a filing could be prepared was three to four months after the test year. He never suggested that such a time frame was either required or typical. Moreover, at page 3 of the Prepared Testimony of GSU's witness Mr. D.N. Beekman submitted in this Docket, Mr. Beekman states that the March 31, 1985 ended test year "is the most recent twelve-month period beginning with a calendar quarter for which the operating data, including all analysis necessary to submit a rate application, are available."

GSU argued that without a painstaking and time-consuming review, analysis and organization of the test year data, GSU would inevitably be less certain of the accuracy of the data that it has filed with the Commission in this proceeding. This simple fact belies OPC's assertion that "(t)he more current operating data is, the more accurate it will be."

GSU further argued that the economic self-interest of a utility seeking rate relief militates strongly in favor of an expeditious filing. Once the utility determines that it needs a change, it has nothing to gain and much to lose by proceeding in a dilatory fashion.

3. Examiner's Conclusions and Recommendations

[1] As discussed by OPC, the Commission clearly has the authority to dismiss a rate case without a hearing if the application does not comply with the test year requirements set forth in the PURA or the Commission's rules. (See e.g., Docket No. 6440, Application of Sam Rayburn G&T, Inc. for Authority to Change Rates (unpublished, November 13, 1985).) Docket No. 6440, for example, involved a petition which was obsolete on its face, since it was based on a test year which was more than two years old. Also, in that case, the utility admitted that it could have based its application on a more recent test year. The present case, however, presents a different situation.

[2] In the examiner's view, the central issue is whether or not GSU's test year constitutes "the most recent twelve months for which operating data for a public utility are available and shall commence with a calendar quarter or fiscal year quarter." The examiner agrees with the interpretation of the word "available" which appears for the most part to have been held by the parties. That interpretation is that the test year must be the most recent twelve months of operating data, commencing with a calendar or fiscal year quarter, which the public utility could have used in preparing its application in compliance with the requirements of applicable law and filing it on the date filed. GSU argues that its test year meets this definition. OPC and other parties disagree.

In determining what period of time it is reasonable to allow a utility to prepare its application after the end of the test year chosen, one must consider the legal requirements the completed RFP must meet and the penalties for failure to do so.

The legal requirements for a sufficient application are set forth in the PURA, the Commission's rules and the RFP. GSU is correct that the new RFP form, which the examiner proposes official notice be taken of, prescribes numerous schedules which are described with considerable specificity. Additional requirements applicable to major rate cases like GSU's are set forth in PURA Section 43(a) and P.U.C. PROC. R. 21.62(a), (b), (c) and (e), and 21.69(a). In addition to the requirements relating to the petition, statement of intent, schedules, workpapers and reports, the utility must submit in written form the testimony and exhibits which form the entirety of its direct case. In addition, under PURA Section 40, the utility has the burden of proof. The filing requirements are intended to allow the application to be considered in an orderly and efficient manner, and to enable the Commission and the parties to cope with the harsh reality of a review period which under PURA Section 43(d) ordinarily is only 185 days long.

Failure properly to comply materially with the legal requirements subjects the utility to possible dismissal of its rate case (P.U.C. PROC. R. 21.69, 21.82(a)(5)), or to involuntary delay of the effective date of the requested rate increase (P.U.C. PROC. R. 21.65(b).) In fact, GSU is at risk of just such an outcome in this case. Pursuant to the general counsel's motion, the examiner issued Order No. 5 finding GSU's application to be materially deficient, although not to an extent justifying outright dismissal on the grounds urged by general counsel. This invoked P.U.C. PROC. R. 21.65(b) which allows GSU ten days after the order was issued to correct deficiencies before postponement of its effective date.

The examiner rejects OPC's argument that GSU's test year should be considered especially stale because of GSU's 45-day extension of its effective date to allow the staff time for its study of the prudence of River Bend. Any other construction would discourage utilities from ever voluntarily extending the 185-day statutory review period. GSU's extension of the effective date was in public interest, permitting a more thorough investigation of an application.

[3] If one accepts the argument that GSU should have filed a rate case using a test year ending June 30, 1985, GSU would have had three months and one day to assemble the entire application. Considering the stringent requirements for a major rate filing, the penalties for failure to meet them, the existence of a new Commission-prescribed RFP and the importance of the present case, the examiner is of the opinion that GSU took a reasonable amount of time after the expiration of the test year to file this rate case. Accordingly, the examiner recommends that GSU's entire rate case not be dismissed due to use of a stale test year.

B. Count II: Dismissal of Step II of Primary Filing

The examiner recommends granting Count II of OPC's Motion to Dismiss.

1. OPC's and General Counsel's Arguments

OPC argued that Step II of the Primary Filing must be dismissed because it fails to comply with Section 3(t) of the PURA and the Commission's requirements for a statement of intent. GSU proposed to implement the second year increase of its Primary Filing 365 days after implementation of its first year increase. Even if GSU were to persuade the Commission to allow it to put the first year increase into effect on an interim basis on January 1, 1986, the second year increase would not take effect until a year and three-quarters after the end of the test year. Under the more likely result that step one rates will take effect after a minimum of 185 days from the filing date, the step two rates would take effect more than two years after the close of the test year upon which the year two rates would be based. This would reduce the test year concept to an absurdity. This has been recognized by other state Commissions:

> The judicial decisions on the subject of the appropriate test year in a utility rate case uniformly adhere to the rule that the test period should be based on the utility's most recent actual experience with such adjustments as will make the test period reflect typical conditions in the immediate future.... The propriety or impropriety of a test year depends upon how well it accomplishes the objective of determining a fair rate of return in the future. Thus the realistic approach to this issue, since rates are fixed for the future and not for the past, is to use the most recent available data for a 12-month period, adjusted for known changes which will occur within a reasonable time after the end of said period so as fairly to represent the future period for which the rates are being fixed. Re General Telephone Company of Florida, 19 PUR4th 227 (Fla. PSC 1977). (citations omitted)

In oral argument Mr. Alfred R. Herrera of general counsel cited Docket No. 6027, the most recent rate case involving the Lower Colorado River Authority (LCRA) for the proposition that the Commission can dismiss Step II of GSU's primary filing.

2. GSU's Arguments

GSU argued that the Commission has the authority to approve the two step rate moderation plan. Section 16 of the PURA gives the Commission broad authority "to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of (its) power and jurisdiction" over public utilities. The Commission and OPC are bound by the mandate of the PURA "to protect the public interest inherent in the rates and services of public utilities." (PURA Section 2.) The two step plan is designed to help the public bear the costs of bringing River Bend Unit 1 into commercial operation. The Commission has the flexibility under its statutory authority to consider and adopt ratemaking plans like that proposed by GSU. The Commission would be ill-advised to impose upon itself the narrow view of its ratemaking power and authority that would be implied by acceptance of OPC's view.

GSU stated that contrary to OPC's assertion, the PURA definition of test year is not a bar to the second step of the Rate Moderation Plan. The Rate Moderation Plan, as proposed, makes the tariff sheets embodying both the first and second year steps effective within 35 days of the October 1, 1985 filing date. While the tariffs will be effective following suspension, the second step is not proposed to be implemented until one year after the first step increase is proposed to be implemented. This proposal fully complies with the statutory requirements of PURA.

GSU further argued that in Docket No. 5560, the impending termination of a favorable fuel contract forced GSU to seek approval for a second step rate increase one year after an initial increase was implemented. OPC raised the same arguments in its motion to dismiss in that case. A settlement among the parties allowed the second step increase to proceed as a separate docket. That agreement by its terms has no precedential value, but it is worth noting that there is no Texas authority that prohibits two step rate increases. Other

state Commissions have approved two step rate increases in appropriate circumstances.

Even if the Commission ultimately decides that it cannot approve the second step of GSU's Rate Moderation Plan, it cannot do so summarily without a hearing. Once the utility files a statement of intent to change its rates, pursuant to PURA Section 43(a), the Commission "shall . . . enter on a hearing to determine the propriety of such change . . . ." (PURA Section 43(c).) The statute continues that "(i)f, after hearing, (it) finds the rates to be unreasonable or in any way in violation of any provision of law, the (Commission) shall determine the level of rates to be charged or applied by the utility . . . ." (PURA Section 43(f) (emphasis added).) In other words, the Commission may alter the filed rate request only after it has held a hearing on the utility's filing. OPC's motion raises questions of fact relating to adequacy of the test year data and effectively proposes a Commission policy that would require utilities to prepare major rate change filings based only on the most current quarterly figures. Such questions and issues cannot be decided without a hearing.

3. Examiner's Conclusions and Recommendations

As noted in Section I of this order, the Commission clearly has the authority to dismiss a case on the grounds that a stale test year was used. In a report adopted by the Commission in Docket No. 6440, the Commission held:

> P.U.C. PROC. R. 21.82 provides for dismissal without a hearing for reasons which include "moot questions or obsolete petitions". The fact that both moot questions and obsolete petitions are referred to suggests that a case can be dismissed for reasons in addition to, for example, an affirmative showing of a change in the facts or the law which has mooted the case. When a rate case is involved, the examiner is of the opinion that the phrase "obsolete petition" should be read in conjunction with the definition of "test year" in PURA Section 3(t) and P.U.C. PROC. R. 21.2, so that a rate application which is not based on the most recent 12 months for which operating data for a public utility are available, commencing with a calendar quarter or a fiscal year quarter, is subject to dismissal as an obsolete petition.

(Docket No. 6440 Examiner's Report at 7 (unpublished, November 13, 1985).) The Commission concluded that that case should be dismissed for reasons including the following. (Id. at 3, 8) The Commission's ability to meet the ratemaking requirements of PURA Sections 39(a) and 41(c) would be frustrated by the processing of an application with an obsolete test year. Processing such an application would shift the burden of proof to other parties to determine the many other costs or revenues of the utility which may have changed since the end of the test year. They would be required to request through discovery and organize information which should have been provided by the utility at the outset. Given the statutory time constraints, and the utility's greater level of resources, the Commission concluded that in that case this burden should be left with the utility. Docket No. 6440 involved a request by a customer-owned electric cooperative for a non-major rate increase. Certainly the above concerns would apply with far greater force in the present docket.

The examiner concludes that Docket No. 6027, the LCRA case cited by general counsel, is more relevant to the issue presented in Count II of OPC's motion to dismiss than is the decision concerning GSU's fuel costs in Docket No. 5560 cited by GSU. The Commission has recognized that fuel costs are unique. P.U.C. SUBST. R. 23.21(b) states: "In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses." A different and less stringent standard is used for fuel expenses: test year expenses as adjusted for known and reasonably predictable changes. The use of this different standard implies the possibility that the periods of possible changes in test year figures which are considered in setting rates might not match for fuel as opposed to other expenses. The Commission has decided that because of the unique nature of fuel expense, use of a less stringent standard nonetheless is justified.

Unlike the second step increase proposed in Docket No. 5560, Step II of the Primary Filing in the present case does not propose changes simply for the purpose of accounting for a huge increase in fuel expense. The Step II request concerns all items of GSU's revenue requirement.

In the LCRA case, LCRA requested a two-step increase in one RFP, alleging that the second step increase was required primarily but not completely by LCRA's increased debt service requirements at a future date certain. The Commission, through Chairman Philip Ricketts, at its Final Order Meeting of January 24, 1985 stated:

> I think there are very limited circumstances... in which the Commission can dismiss a case without a hearing. I think one of them is where what is being sought is simply not supported by the filing pursuant to the Commission's rules. And very clearly and unambiguously, I think... that has to be the case. But in this instance there would be a very fundamental deficiency in the severed proceeding in that we would not have a full Rate Filing Package on the most recent historical data prior to the date of the second step...
>
> But in my opinion, we do have legal authority in this case to dismiss the second step on the basis (that)... it is not now supported by any type of filing which would provide for full Commission review of the revenues and expenses of the utility on a most recent test year prior to the effective date of the second step.

(January 24, 1985 Final Order Meeting Tr. at 73-74.)

In dismissing the "Step Two" request the Commission entered the following Order:

> 2. Pursuant to the requirements and authority set forth in Sections 3(t), 16(a), 17(e), 37, 39-41 and 43(a) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1984), P.U.C. SUBST. R. 23.3 and 23.21 and P.U.C. PROC. R. 21.2, 21.69(a) and 21.106(a), Step Two of the LCRA's proposed rate increase, Docket No. 6046, is hereby DISMISSED.

The point is that if the Commission decides now what rates will be in the distant future based on a current test year, that test year will be quite obsolete by the time the rate increase is finally implemented. This violates the Legislature's clear intent that a current test year be used in setting rates. (PURA Section 3(t).) In fact, the problem is worse when considering a rate increase to be implemented in the distant future using a current test year than when considering a rate increase to be implemented in the near future using an old test year. The reason is that in the latter situation, actual data will be available on which to base determinations of known and measurable changes, whereas in the former situation, "known" and "measurable" changes to bring the test year up to date would have to be based on estimates. Of course, known and measurable changes can be positive or negative.

GSU's proposed Step II rate increase if granted would be implemented no sooner than December 31, 1986. The same outcome could be achieved by the Commission considering a rate case filed in June 1986, for example, using a test year ending December 30, 1985. This would be nine months more current than the test year used in the present case. Moreover, to the extent that rates set in response to GSU's Step I filing are implemented later than December 31, 1985, the rates set in response to Step II would be implemented that much later. Thus the same result could be accomplished by GSU filing a request for the Step II rates using an even later test year than one ending December 30, 1985. This would have the added advantage of yielding actual data for a critical period, actual operation of River Bend, assuming no further delays.

For these reasons, the examiner recommends dismissal of Step II of the Primary Filing.

C. Count III: Use of Projected Data in Alternate Filing

The examiner recommends that Count III of OPC's motion to dismiss be denied.

OPC argued that the Alternate Filing should be dismissed because according to GSU witness Willis, rather than basing the Alternate Filing on the test year construction work in progress (CWIP) level:

> the Company proposes to continue to accrue a return (at the Company's AFUDC rate) on the difference between 50 percent of the River Bend CWIP balance at March 31, 1985 and the balance of the unit's expected cost at December 31, 1985 (the expected commercial in-service date of the unit). (Docket No. 6525, Willis Direct Testimony at 22.)

Based on this representation, it is obvious that the Alternate Filing is based on projected, rather than historic CWIP data. Thus it does not comply with the historic test year definition set out in Section 3(t) of the PURA and P.U.C. PROC. R. 21.2 and should be dismissed for the reasons argued in Count I.

GSU argued that its request for inclusion of River Bend in CWIP is identical to the treatment previously authorized by the Commission, and is based not on projections but on actual test year data. GSU also proposes the treatment described in the testimony quoted above for the 50 percent of River Bend costs not included as CWIP in rate base. This proposal springs from GSU's concern about its ability to earn a return on River Bend CWIP not included in rate base following commercial operation of River Bend.

[4] GSU's Alternate Filing appears to be an ordinary CWIP case based on historical test year data. The special treatment proposed for River Bend costs not included as CWIP in rate base will stand or fall on its own merits. However, the inclusion of this proposal in the Alternate Filing does not justify dismissal of the entire filing.

D. Count IV: Request to Include River Bend as Plant-in-Service in Primary Filing

The examiner recommends granting Count IV of OPC's motion to dismiss.

1. OPC's Arguments

OPC argued that GSU's Primary Filing must be dismissed on the ground that the theory on which it is based has previously been rejected by the Commission. In Docket No. 5560, GSU sought to treat the Big Cajun coal plant as plant-in-service even though it was not commercially operational until three months after the end of the test year. The Commission rejected GSU's argument in that case observing that Commission holdings in at least three recent major electric rate cases show unequivocally that the general rule is that reclassifications of test year CWIP to plant-in-service are not allowed. GSU's Primary Filing is based on treatment of River Bend as plant-in-service, even though that plant is not expected to become commercially operational until nine months after the end of the test year. Based on Docket No. 5560, the Primary Filing must be dismissed as res judicata under P.U.C. PROC. R. 21.82(3).

2. GSU's Arguments

GSU stated that in Docket No. 5560, the Commission held that Big Cajun could not be placed in rate base as plant-in-service because it did not reach commercial operation during the test year used in that docket. Instead, the Commission ordered that 50 percent of test year CWIP be included in rate base.

GSU argued that the Commission's decision respecting Big Cajun in Docket No. 5560 is not controlling in this proceeding as res judicata, for two reasons. First, the Commission's decision regarding the proper treatment of Big Cajun is currently under appeal before the Travis County District Court. Texas precedent makes clear that

> the taking of an appeal generally operates to deprive the judgment, or that portion of it appealed from, of the finality necessary to make it authoritative, and it can become res judicata only in the event that the appeal is withdrawn or dismissed or results in an affirmance.

(34 Tex. Jur.2d Section 472 at 522-23.)

Second, in order for a judgment to be res judicata for future actions, there must be an identity not only of parties, but also of issues and subject matter. This case raises issues entirely different from those considered in Docket No. 5560. GSU argued that at most, Docket No. 5560 provides the Commission with a holding that it might choose to follow on the basis of stare decisis principles. However, the Commission is not bound to follow precedent on the basis of stare decisis. The Commission has broad discretionary powers to set rates. (PURA Sections 16(a), 37, 38, 39(a), 41(c)(3).) Thus, the Commission must examine each rate proceeding to determine whether or not the Commission's holding respecting the Big Cajun unit in Docket No. 5560 should be applied.

Application of the Big Cajun ruling to River Bend is inappropriate, for several reasons. First, GSU's investment in River Bend is much greater, justifying careful consideration of its request to include River Bend in rate base as plant-in-service. Second, GSU's Rate Moderation Plan will effectively defer a significant portion of rate base recognition of River Bend. Third, the Big Cajun ruling offered as its rationale the need to match investment, expenses and revenues in setting rates. GSU's willingness to defer a portion of its revenue requirement in order to moderate the rate impact of River Bend makes that rationale inapposite here.

3. Examiner's Conclusions and Recommendations

On November 6, 1985, the Commission decided an issue in Docket No. 6350, EPEC's pending rate case, which is virtually identical to that raised in Count IV of OPC's motion to dismiss. EPEC had also submitted alternate filings requesting inclusion of its nuclear power plant, Palo Verde (Palo Verde), as plant-in-service and alternatively as CWIP. The Commission dismissed the filing requesting inclusion of Palo Verde as plant-in-service. The Commission found that the plant-in-service filing contravenes the rule enunciated through prior Commission case law prohibiting inclusion of test year-end CWIP in plant-in-service, does not meet known and measurable standards because it is based upon estimated costs, and violates the matching principle due to the utility's mismatching of revenues, expenses and investment levels. The Commission further held that as a matter of policy, the parties should only be required to go forward with one case in the interests of administrative efficiency.

[5] The examiner recommends that GSU's Primary Filing also be dismissed, based on the Commission's decision in Docket No. 6350, and for the reasons expressed herein.

There is no dispute concerning the fact, which is evident from GSU's petition and statement of intent, that River Bend was not commercially operable before the end of the test year. GSU estimates the commercial operation date as December 30, 1985, nine months after the end of the test year. Because the commercial operation of River Bend is a future event, its date is inherently uncertain. However, even assuming no delays, the unit would become commercially operable three months after the case was filed, and only a month and one week before the intervenors must prefile their entire revenue requirement cases, a month and two weeks before the staff must prefile and a month and three weeks before the hearing must begin.

A utility's plant-in-service is set at "the original cost of property used by and useful to the public utility in providing service". (PURA Section 41(a).) Original cost is "the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use... less depreciation." (Id.) "Cost of facilities ... shall be separated or allocated as prescribed by the regulatory authority." (PURA Section 41(b).)

Obviously, a decision concerning inclusion of any power plant in rate base as plant-in-service is not simple. The parties and the Commission must ascertain the exact original cost of the plant, as well as the percentage, if any, of the plant which should be considered "used and useful". As pointed out by GSU in its response to Count I of OPC's motion to intervene, this task is considerably more difficult in this case than in most. GSU is answerable to three separate regulatory jurisdictions, among which the cost of River Bend must be properly allocated. In addition, an exhaustive review and analysis of the planning for and construction of River Bend will be needed. GSU also comments on the unusually large size of its investment in River Bend. Just as was true for GSU in its preparation of its direct case, each of these factors should dramatically increase the work the intervenors, staff and Commission would have to perform to respond appropriately to the issues associated with including River Bend in plant-in-service.

Even if one assumes that all of the information necessary for the parties to finalize their plant recommendations will be available instantly upon commercial operation of River Bend, which would appear unlikely, information respecting the actual expenses of operating the new plant will not yet be available, and certainly not for a period of time arguably sufficient to be considered representative of costs which will be incurred during the period the new rates will be in effect. Only operating expenses which are reasonable and necessary may be allowed in rates. (PURA Section 39(a).)

These factors are one reason for the standard that power plants will be classified from CWIP to plant-in-service only if they are used and useful by the end of the test year. This standard ensures that actual data respecting the cost of the power plant and the expense of operating it for a period of time will exist, and will be available soon enough to enable other parties and the staff a fair opportunity to develop their recommendations, and to permit a full and informed exploration of the issues at the hearing.

One should note that regulatory lag is inherent in the concept of a utility whose rates are regulated. This lag is as short in Texas as it is possible for the examiner to imagine. The utility chooses when to file a rate case. The test year is to be as current as possible. Barring an extension of the effective date such as that volunteered by GSU in this case, a final order must usually be issued within 185 days, a prodigious task for the filing submitted by GSU, which GSU acknowledges to be extraordinarily voluminous and complex. Thus the period between expiration of the test year and the implementation of new rates can be seen as the time inherently necessary for the utility to accumulate and present actual data, for the parties to evaluate it, and for the Commission to formulate its final decision. Contrary to GSU's argument, the fact that the issues in this case are of the magnitude that they are seems to the examiner to argue not in favor of, but against, shortening this brief period for data gathering and evaluation.

As noted in Docket No. 6350, reclassification of a nuclear power plant at this stage from CWIP to plant-in-service would require the Commission to base a substantial part of its rate determination on mere estimates, not on test year figures adjusted for known and measurable changes as contemplated in the Commission's rules and in case law respecting utility ratemaking. It would violate the matching principle by resulting in a mismatching of revenues, expenses and investment levels. It would require the parties and the Commission to dissipate their limited resources and review time in an effort to try two enormous GSU rate cases simultaneously.

GSU argued that the Commission cannot dismiss the Primary Filing without a hearing. The examiner disagrees. The Commission is not required to try to finality every innovative rate proposal simply because a utility makes it. If it were, it would have been required to hold extensive hearings on including River Bend in plant-in-service had GSU made such a request six months or a year ago or five years ago. Nor would there be any limit to the number of innovative proposals a utility could make in one rate filing. PURA Section 16(a) provides: "The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction." The examiner concludes that the Commission's control over its own docket to the extent contemplated by Count IV of OPC's motion to dismiss is absolutely necessary and convenient to the Commission's ability to carry out its statutory responsibilities. The Commission has the authority to dismiss GSU's Primary

Filing, and the examiner recommends that it do so for the reason expressed in the EPEC case and in this proposal for decision.

E. Count V: Use of Alternative Filings

OPC argued that GSU's filing must be dismissed under P.U.C. PROC. R. 21.82(a)(4) on the ground that the Alternate Filing will result in an "unnecessary duplication of proceedings." GSU has submitted two separate and complete rate increase requests to implement rates for the same next rate year. Each case contains distinctly different proposed tariff sheets implementing different amounts of rate increase requests. The difference in the proposed ratemaking treatment of River Bend between the two cases impacts virtually all major revenue requirement issues in each case. GSU should be required to elect a single theory it wishes to proceed on in this case with regard to the ratemaking treatment of River Bend. Should that theory be rejected, GSU's remedy is properly at the courthouse, not by filing multiple simultaneous rate cases at the Commission. Otherwise, every rate case would have the potential of multiplying into as many separate and simultaneous rate cases as there are controversial ratemaking issues involved. This would put an intolerable burden on the Commission and intervenors.

GSU argued that due to uncertainty and its implications for GSU's financial condition, GSU had no choice but to file alternate filings. It further argued that the Alternate Filings do not impose an undue burden on the Commission or the parties. Rather, they provide an opportunity for full consideration of both approaches. Finally, Rule 48 of the Texas Rules of Civil Procedure for district and county courts provides that a party may set forth two or more statements of a claim or defense alternatively or hypothetically.

In its response to Count I of OPC's motion, GSU argues that the existence of the alternative filings generated so much work that GSU needed additional time after the end of the test year to file. However, in its response to Count V, GSU argues that the same fact would not generate much work for the parties and the Commission. The examiner concludes that in this respect GSU is carrying its right to argue in the alternative to extremes. The examiner agrees with OPC's characterization of the burden which processing these alternate filings would place upon the parties and the Commission.

However, in light of her recommendation with respect to Count IV, the examiner finds it unnecessary to decide whether or not utilities generally have the right to file alternative RFPs to be considered simultaneously. Based on the facts in this case, the examiner has concluded that one of the two alternatives, specifically the Primary Filing, should be dismissed, which would moot OPC's Count V.

III. 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 October 1, 1985, GSU filed a statement of intent to increase its rates within the unincorporated areas served by it. GSU is seeking authorization to increase its rates by $89,601,486 or 10.8 percent in the first year (the Step I increase) and $87,790,277 or 9.55 percent in the second year (the Step II increase), or a total of $177,391,763, or 21.4 percent, over total Texas adjusted test year revenues, assuming Commission recognition of GSU's nuclear power plant, River Bend Unit 1, as plant-in-service. GSU termed this part of its request its Primary Filing. In the alternative, should the Commission exclude River Bend from GSU's plant-in-service, GSU is seeking authorization to increase its rates by $110,181,957, or 13.28 percent over total Texas adjusted test year revenues. GSU termed this part of its request its Alternate Filing.

2. On October 4, 1985, intervenor OPC filed a five count motion to dismiss.

3. On October 15, 1985, GSU filed a written response to OPC's motion to dismiss.

4. The motion was orally argued before the examiner at an October 21, 1985 prehearing conference. The motion was supported by the intervenors OPC, the Cities, and the State Agencies and not opposed by the Commission's general counsel. GSU argued against the motion.

5. GSU's petition states on its face the following. The test year utilized in the RFP was the 12-month period beginning April 1, 1984 and ending March 31,1985. GSU is proposing that the Step II rate change not be implemented until 365 days after the Step I rate change is implemented. GSU is reserving a right to request that the Step I rates be implemented as interim rates should River Bend begin commercial operation before the Commission's final order in this case. The anticipated commercial operation date for River Bend is December 31, 1985.

6. The test year utilized in this case would not constitute the most recent 12 months commencing with a calendar or fiscal year quarter for which operating data would be available with respect to Step II of the Primary Filing, which rate change would be implemented no sooner than December 31, 1986.

7. The parties should not be required to go forward with Step II of the Primary Filing, in the interests of administrative efficiency.

8. Step II of the Primary Filing should be dismissed.

9. The Commission has enunciated a standard through prior Commission case law prohibiting inclusion of test year-end CWIP in plant-in-service.

10. The costs associated with River Bend set forth in the Primary Filing cannot be considered known and measurable since they are estimated costs.

11. The Primary Filing blends test year data and post test year estimates resulting in a mismatching of revenues, expenses and investment levels.

12. The parties should only be required to go forward with the Alternate Filing, in the interests of administrative efficiency.

13. The Primary Filing should be dismissed.

B. Conclusions of Law

1. The Commission has jurisdiction over the matters considered herein pursuant to Sections 16(a), 17(e), 37 and 43 of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985).

2. GSU is a public utility as defined in PURA Section 3(c)(1).

3. Notice of Commission proceedings in this case was properly given in accordance with P.U.C. PROC. R. 21.22(a).

4. It is proper to dismiss Step II of the Primary Filing as an obsolete petition pursuant to P.U.C. PROC. R. 21.82(a)(2).

5. Estimated expenses associated with generating plant not in commercial operation at test year end are not known and measurable within the meaning of P.U.C. SUBST. R. 23.21(b).

6. The Primary Filing contravenes the rule enunciated through Commission case law that inclusion of test year-end CWIP in plant-in-service is prohibited.

7. GSU's Primary Filing violates the regulatory matching principle.

-continued-

8. The factual admissions of GSU contained in its petition constitute a sufficient factual predicate to permit dismissal of the Primary Filing.

Respectfully submitted,

Elizabeth Drews
Elizabeth Drews
Administrative Law Judge

APPROVED on this the 15th day of November 1985.

for Phillip Holder
RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

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DOCKET NOS. 6477 and 6525

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	*	PUBLIC UTILITY COMMISSION
	*	OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	*	

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that in accordance with applicable statutes an administrative law judge prepared and filed a Proposal for Decision respecting a motion to dismiss containing Findings of Fact and Conclusions of Law, which Proposal for Decision is ADOPTED with the following modifications, and made a part hereof.

a. The discussion contained in Section II. B. of the Proposal for Decision is not adopted.

b. Finding of Fact Nos. 6 through 8 and Conclusion of Law No. 4 are not adopted.

The Commission further issues the following Order:

1. Official notice is taken of the current Commission-prescribed rate filing package form for Class A and B electric utilities.

2. The Primary Filing portion of the application cited above is DISMISSED.

3. Except as expressly granted herein the Office of Public Utility Counsel's motion to dismiss is DENIED.

-continued-

4. This order is effective on the date of signing.

SIGNED AT AUSTIN, TEXAS on this the 2nd day of December 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

SIGNED: _____
JG CAMPBELL

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

tv

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	DOCKET NOS. 6477 and 6525

February 6, 1986

Order finding certain documents to be confidential, and others not to be, adopted.

[1] PROCEDURE - PREHEARING PROCEEDINGS - PRIVILEGED DOCUMENTS/PROTECTIVE ORDERS

Where it had not been shown that public disclosure of information could harm any activities by a monopoly electric utility in a competitive market, the Commission held that the electric utility could not claim a trade secret privilege.

[2] PROCEDURE - PREHEARING PROCEEDINGS - PRIVILEGED DOCUMENTS/PROTECTIVE ORDERS

In determining if a document should be disclosed to the public, the Commission may consider a trade secret interest of a third party which has been alleged to exist.

[3] PROCEDURE - PREHEARING PROCEEDINGS - PRIVILEGED DOCUMENTS/PROTECTIVE ORDERS

Privileges are strictly construed and the party asserting the privilege has the burden of meeting each of its elements.

[4] PROCEDURE - PREHEARING PROCEEDINGS - PRIVILEGED DOCUMENTS/PROTECTIVE ORDERS

A party asserting a trade secret privilege must demonstrate that the information is the type contemplated by the trade secret privilege, and that specific and serious harm would result from disclosure.

[5] PROCEDURE - PREHEARING PROCEEDINGS - PRIVILEGED DOCUMENTS/PROTECTIVE ORDERS

In determining if information constitutes a trade secret, the Commission should consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the owner and to his competitors; (5) the amount of effort or money expended by the owner in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

[6] PROCEDURE - PREHEARING PROCEEDINGS - PRIVILEGED DOCUMENTS/PROTECTIVE ORDERS

Where a trade secret has been shown, the Commission should take such protective measure as the interest of the holder of the privilege and of the parties and the furtherance of justice may require; a trade secret should not be publicly disclosed except in such cases and to such extent as may appear to be indispensable for the ascertainment of truth.

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY

APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 18

ORDER RULING ON CONFIDENTIALITY OF DISCOVERY DOCUMENTS AND PROTECTIVE ORDER

Before issuing this order, the examiner reviewed and considered every authority cited by the parties and every document whose confidentiality is in dispute, as well as all written filings and oral arguments. The examiner has not attempted to describe all of the above in this order, because doing so would likely delay its issuance to an extent severely prejudicial to the cases of many of the parties. She has considered it important to discuss in some detail, however, the general procedures and standards utilized.

I. Procedural Discussion

On December 16, 1985, the examiner adopted a protective order, pursuant to which documents claimed by Gulf States Utilities Company (GSU) to be confidential but not privileged were made available to the parties. On January 3, 1986, the Office of Public Utility Counsel (OPC) filed an request for an order finding that the documents claimed by GSU to be confidential are not. At a January 8, 1986, open meeting, the Commission granted the Cities' appeal and dissolved the protective order. As discussed at the open meeting, GSU then began to recollect from the other parties the documents it had provided pursuant to the protective order. At the open meeting, the examiner stated that OPC's request to designate the documents non-confidential would be considered at the January 13, 1986, prehearing conference and that she would issue an order requiring GSU to file specific pleadings concerning its confidentiality claims. On Monday morning, January 13, 1986, GSU filed numerous documents, including its motion for protective order, memorandum in support thereof, and affidavits with attachments by twelve individuals. GSU asked to be allowed to present evidence by the twelve persons that afternoon.

At the prehearing conference, appearances were entered by the following: George Avery, Cecil Johnson, Donald Clements and Patrick Cowlishaw for GSU; Ralph Gonzalez for Texas Industrial Energy Consumers (TIEC); Peter Brickfield for North Star Steel Texas, Inc. (North Star Steel); Scott McCollough of the Attorney General's Office for the State Agencies; Jim Boyle, Walter Washington and Jeannine Lehman for OPC; Steve Porter for the Cities; and Alfred R. Herrera of the Commission General Counsel's Office for the public interest. In addition, appearances were entered by two non-parties: Thomas Anson and Ellen Cohn for Stone and Webster (S&W), and Stuart Richel for General Electric (GE). The

prehearing conference convened at 1:30 p.m. Approximately eight hours of argument were heard concerning the confidentiality issues. The prehearing conference was then recessed, and reconvened at 8:00 a.m. the following day in order to take up other pending discovery disputes. These discovery disputes are ruled on in other examiner's orders.

At the January 13, 1986 prehearing conference, the staff and the intervenors, except for the State Agencies, all opposed both GSU's request for the taking of evidence, and GSU's request that evidence be taken that day. Reasons cited include the following: (1) the prehearing conference was not noticed for the taking of evidence; (2) the caselaw does not require that evidence be taken; (3) the taking of evidence would be contrary to the scheme agreed to by most parties, including GSU, in the protective order; (4) at least one party had not exercised its right to review all of the documents under the protective order before it was dissolved and accordingly would have difficulty preparing for the taking of evidence concerning the confidentiality of such documents; (5) the parties had had insufficient time to prepare; and (6) the parties feared that the taking of evidence would delay issuance of an order enabling them to see the documents again. The State Agencies argued that the taking of evidence was recommended but not required, but that evidence should not be taken on that day. Mr. McCollough stated that the State Agencies would be willing to abide by an agreement among the parties not to disclose documents to the public while confidentiality of the documents is being considered, so that they could have access to the documents but still obtain a speedy resolution respecting disclosure.

GSU argued that evidence should be taken because the confidentiality issues are so serious, and that the taking of evidence in such situations is common practice in the courts. In response to a series of questions by the examiner, GSU indicated the following. First, the parties not present at the prehearing conference would not yet have received GSU's motion since it had just been mailed that day. Second, the fundamental facts GSU hoped to prove by presenting evidence were those contained in its affidavits. Third, the examiner should look to GSU's January 13, 1986 filing, rather than the attachments to the protective order, to ascertain what documents GSU is presently claiming are confidential, because GSU has pruned the list somewhat. Fourth, the documents GSU wants the examiner to review in camera total approximately eight feet in height. Fifth, GSU would not be willing to agree with individual parties that documents be provided confidentially, in the absence of a protective order. There followed a discussion among the parties concerning whether, if the examiner found that documents are not confidential, she should order immediate disclosure, disclosure after a period of time allowing GSU an opportunity to appeal to the Commission, or disclosure under a protective order allowing the parties to look at the documents during GSU's appeal.

The intervenors and staff were unenthusiastic about the examiner's suggestion that other pending discovery disputes be taken up on January 13, 1986, and that the prehearing conference then be recessed for a few days to allow the intervenors

and staff time to review and to prepare for consideration of GSU's filing respecting confidentiality. They did not favor this outcome unless the examiner decided that evidence should be taken. They were also generally unenthusiastic about submitting a written response to GSU's arguments and evidence, although for convenience the examiner established a deadline for anyone that wished to do so. Instead, the staff and all of the intervenors except the Cities agreed that the confidentiality disputes should be addressed using the following procedures. First, GSU's affidavits should be considered evidence of what GSU's witnesses would have testified to had they taken the stand. Second, the examiner should make her decision based on the written filings, oral argument and in camera inspection of the documents. Third, if the examiner issued a ruling that documents are not to be protected, the examiner should order that they be provided to the parties under a protective order during GSU's appeal time. The Cities agreed with (1) and (2), but opposed (3) on the grounds that it was precisely the scheme the Commission had disapproved in reversing the protective order. GSU initially wanted evidence to be taken unless the other parties stipulated to the facts contained in the affidavits, but later appeared reasonably satisfied if the intervenors and staff agreed, as they did, that the affidavits be considered as what GSU's witnesses would have testified to had they taken the stand.

The examiner then ruled that evidence would not be taken, that GSU's affidavits would be considered as what GSU's witnesses would have testified to had they taken the stand, and that her decision would be based on the written filings, oral argument, authorities cited, and in camera inspection of the documents.

On January 15, 1986, North Star Steel submitted copies of certain reports which GSU had filed with this Commission and with the Federal Energy Regulatory Commission. At the prehearing conference, all parties except GSU indicated that they had no objection to official notice being taken of these documents. GSU simply wished to assure itself that the copies were complete and accurate. On January 15, 1986, Mr. Avery notified the examiner by telephone that GSU has no objection to such official notice being taken. Official notice is hereby TAKEN of the documents submitted by North Star Steel. As contemplated at the prehearing conference, the examiner compared these documents to those claimed by GSU to be confidential in an effort to ascertain if any of the information alleged to be protected is in the public domain.

Legal memoranda were submitted by GE on January 15, 1986 and by S&W on January 16, 1986. On January 16, 1986, GSU filed a letter with attachments setting forth its position regarding a question raised by OPC, which concerns information claimed to be confidential submitted to Temple, Barker and Sloane, the firm which audited GSU for the Commission. On January 21, 1986, GSU submitted a list of documents claimed to be confidential which were since discovered to be in the public domain.

II. Legal Authorities

The participants' policy and legal arguments and citations to authorities respecting confidentiality in general are contained in GSU's, S&W's and GE's memoranda and in the transcript of the January 13, 1986 prehearing conference.

In general, GSU has used the term "privileged" to refer to documents which need not be disclosed to the parties or the public, and "confidential" to refer to documents which must be disclosed to the parties but not to the public. Although GSU, S&W and GE advanced some arguments which might be classified as referring to privileges, they have taken the position not that these documents should be withheld from the parties, but rather that they should be withheld from the public.

GSU asserts that all of the documents it claims to be confidential contain sensitive commercial information that, if disseminated without protection, would cause substantial harm to GSU in its future operations, or to third parties such as signatories to contracts with GSU, or entities which provided the requested information to GSU. For some documents, GSU seeks to protect only specific sections.

A. Texas Statutes and Rules

Section 14(a) of the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1986), provides in part: "The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed." Section 14a(a) provides that discovery is "subject to such limitations of the kind provided for discovery under the Rules of Civil Procedure".

The laws of privilege clearly apply to discovery in Commission proceedings. APTRA Section 14(a) states: "Agencies shall give effect to the rules of privilege recognized by law." (Accord APTRA Section 14a(a)(1), pertaining to discovery.) Rule 166b.3 of the Texas Rules of Civil Procedure (TRCP) provides in part: "The following matters are not discoverable:...(e) any matter protected from disclosure by privilege."

However, the privilege must be expressly authorized by law. (Rule 501 of the Texas Rules of Evidence (TRE).) The rule relating to the specific privilege claimed by GSU, S&W and GE is TRE Rule 507, which provides:

> A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interest of the holder of the privilege and of the parties and the furtherance of justice may require.

Of course even if a privilege exists, it may be waived by disclosure of any significant part of the privileged matter unless such disclosure itself is privileged. (TRE Rule 511.) Counsel for GSU, S&W and GE positively averred at the prehearing conference that they believed that all of the documents they claimed to be confidential met this standard.

It is evident from TRE Rule 507, quoted above, that the judge may order either that a trade secret not be disclosed, or that it be disclosed subject to "such protective measures as the interests of the holder of the privilege and of the parties and the furtherance of justice may require." TRCP Rule 166b.4 states:

> Protective Orders. On motion specifying the grounds and made by any person against or from whom discovery is sought under these rules, the court may make any order in the interest of justice necessary to protect the movant from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Specifically, the court's authority as to such orders extends to, although it is not necessarily limited by, any of the following:
>
> a. ordering that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;
>
> b. ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the court;
>
> c. ordering that results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted.

Courts (and by inference, agencies in the exercise of adjudicative functions) are given broad discretion regarding the protective measures to be imposed. (See McGregor v. Gordon, 442 S.W. 2d 751 (Tex. Rev. Civ. App. - Austin 1969, writ ref'd n.r.e.) Certainly the standard of what is required in the interests of justice is quite subjective. On the other hand, APTRA, TRCP and TRE make it obvious that the rules of privilege are mandatory.

B. Judicial and Administrative Decisions

When evidence has been shown to be relevant to the subject matter of the case, it is incumbent upon the party claiming that information should not be made public to show good cause. (See, e.g., Essex Wire Corp. v. Eastern Electric Sales Co., 48 F.R.D. 308 (E.D. Pa.1969).) "Whether particular information would customarily be disclosed to the public by the person from whom it was obtained is not the only relevant inquiry in determining whether the information is 'confidential'.... A court must also be satisfied that non-disclosure is justified by the legislative purpose which underlies the exemption." (Nat'l Parks and Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974).)

The particular claims of confidentiality made by GSU, S&W and GE raise three specific questions on which the cases shed some light. First, what type of information may constitute a trade secret? Second, who may claim the privilege? Third, what standards should be used in determining if protective measures are warranted?

1. What Type of Information May Constitute a Trade Secret?

In Luccous v. J.C. Kinley Co., 376 S.W. 2d 336 (Tex. 1964), the Texas Supreme Court used the following definition:

> A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers... A trade secret is a process or device for continuous use in the operation of the business. Generally it relates to the production of goods, as, for example, a machine or formula for the production of an article.

In Zenith Radio Corp. v. Matsushita Electric Industrial Co., Ltd., 529 F. Supp. 866 (E.D. Pa. 1981), aff'd in part, rev'd in part on other grounds, 723 F.2d 238 (3rd Cir. 1983), the court observed that in cases in which a protective order has been issued, the courts discuss categories of information such as customer, supplier, and price lists, financial records, and contract terms. "The terms of an agreement or a contract have often been the subject matter of a protective order designed to ensure that this type of confidential business information is not revealed to the public." (Essex Wire.)

2. Who Can Claim the Privilege?

The present case presents two issues concerning who can claim the trade secret privilege: first, can GSU claim the privilege, and second, can third parties such as S&W and GE claim the privilege?

a. Can GSU Claim the Privilege?

[1] The purpose of the trade secret privilege is to protect competitively sensitive information from disclosure. The question thus arises, can a monopoly such as GSU claim the privilege? In National Parks and Conservation Ass'n v. Morton, 498 F.2d 765 (D.C. Cir. 1974), the court made the following comments concerning this question:

> Appellant argues that such a showing cannot be made in this case because the concessioners are monopolists, protected from competition during the term of their contracts and enjoying a statutory preference over other bidders at renewal time. In other words, appellant argues that disclosure cannot impair the concessioners' competitive position because they have no competition. While this argument is very compelling, we are reluctant to accept it without first providing appellee the opportunity to develop a fuller record in the district court. It might be shown, for example, that disclosure of information about concession activities will injure the concessioners' competitive position in a nonconcession enterprise.

Unlike the situation in National Parks, the current case does not present a situation where public disclosure of the information could harm the monopolist's activities in a competitive market. Certainly, neither GSU's pleadings and affidavits, nor the documents claimed to be privileged, suggest this possibility.

GSU argues that, although it is a monopoly, it must purchase goods and services in competitive markets. GSU asserts that disclosure of the documents could damage GSU's ability to obtain favorable prices for the goods and services it must purchase, and thereby increase rates as GSU passes these higher costs on to its customers. While the scenario GSU describes might be a cause for concern, it does not appear to be the type of concern which forms the basis for the trade secret or any other privilege. The Commission might have the discretion to order protective measures pursuant to TRCP Rule 166b.4, which does not refer to privileges or to competitive sensitivity. However, the examiner reads the Commission's comments at the January 8, 1986 open meeting to indicate their conviction that the importance of public disclosure of information concerning the components of public utility rates outweighs the risk, if any, that disclosure might drive up some prices. (See January 8, 1986 open meeting Tr. at 89, 91, 94-97, 117.) The Commission observed that privileges are strictly construed and that as a general rule, public disclosure is required.

The examiner concludes that GSU can not claim the privilege.

b. Can Third Parties Claim the Privilege?

As noted previously, two third parties, S&W and GE, appeared at the prehearing conference and later submitted legal memoranda. GSU's January 13, 1986 filing includes an affidavit by a representative of GE, January 1986 letters from representatives of Kerr-McGee Corporation, Exxon Gas System, Inc., Burlington Northern Railroad, and Cogen Power, Inc., and earlier letters from representatives of Cajun Electric Power Cooperative, Inc., GE, and the Department of Energy. Each of the above entities indicated that it did not wish for some of the documents GSU claims to be confidential to be disclosed to the public. When a reason was specified, it related to a trade-secret type interest of the third party. The question is thus presented: How should the Commission consider the rights of third parties requesting that documents be protected in deciding whether or not the documents should be disclosed to the public?

[2] TRCP Rule 166b.4 refers to "the movant". However TRE Rule 507, respecting trade secrets, states that "A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him," and that the court should consider "the interests of the holder of the privilege and of the parties and the furtherance of justice". GSU and GE cited several trade secrets cases in which the court obviously considered the rights of third parties in determining whether or not materials should be disclosed to the public. Where a trade secret interest of a third party has been specifically alleged, the examiner has done the same.

3. What Standards Should Be Used in Determining if Protective Measures are Warranted?

In Automatic Drilling Machines, Inc. v. Miller, 515 S.W.2d 256 (Tex. 1974), the Texas Supreme Court held: "A public disclosure of trade secrets should not be required, however, except 'in such cases and to such extent as may appear to be indispensable for the ascertainment of truth.'"

In Lamons Metal Gasket Co. v. Traylor, 361 S.W.2d 211 (Tex. Civ. App.-Houston 1961, writ ref'd n.r.e.), a Texas Court of Appeals observed that when information "is generally known in the industry, there is no legally recognizable trade secret." The discussion in Zenith, attached as Examiner's Exhibit A, also contains useful insights.

It has been held that a less stringent standard should be utilized for imposing protective measures regarding documents sought to be produced during discovery than those sought to be introduced at the hearing, for two reasons. First, there is a stronger public interest attached to documents upon which the court or agency's substantive decision is actually to be based, than to those simply requested by a party at some point during discovery. Second, such protective measures may facilitate discovery, particularly where complex litigation is involved. (See Zenith; Professor Ernest Gellhorn, "Business Secrets in Administrative Agency Adjudication," paper presented before the Federal Trial Examiners' Seminar, 1985.)

S&W cited several federal cases for the proposition that unjustified disclosure of proprietary information by a government agency constitutes a taking of property without just compensation in violation of the Fifth Amendment to the United States Constitution. In one such case, Wearly v. FTC, 462 F. Supp. 589 (D.N.J. 1978), vacated on other grounds, 616 F. 2d 662 (3rd. Cir. 1980), cert. denied, 449 U.S. 822 (1980), the court observed:

> There can be no real doubt that the trade secret privilege, as a rule of evidence, is grounded on the property nature of the trade secret and that it recognizes the fact that disclosure of the tenor and content destroys both the value and the property. In balancing the need for evidence against the property right, the well-recognized concept is that the privilege is a qualified one in the sense that disclosure will be required (so that the evidence may be available) but under the control of a protective order (to the end that the property not be "taken").

Both GSU and the State Agencies cite decisions construing the trade secrets exception to the Texas Open Records Act, Tex. Rev. Civ. Stat. Ann. art. 6252-17a (Vernon Supp. 1986). Some of the more applicable decisions are summarized below.

In Open Records Decision (ORD) No. 217 (1978), the Texas Attorney General held that the audit program part of a proposal submitted by Touche Ross & Co. to the State Government falls within the trade secret exception. The Attorney General related the following facts:

> An audit program consists of the plan and procedure by which an auditor conducts his audit. An accounting firm will specially adapt a program as it approaches each audit, and programs often reflect a substantial investment of time and money. We are advised that superior audit programs can give accounting firms significant competitive advantages.
>
> These programs are carefully treated as confidential within the firm and the industry. Only those employees who are involved with that particular audit are allowed access to the program. Manuals that contain audit plan information are assigned to specific employees and are

required to be returned if an employee leaves the firm. During the audit, the audit program and auditor's workpapers are kept under lock when not in use. Also, in the proposal to the Criminal Justice Division, Touche Ross & Co. singled out the audit program as the only part of the proposal that it requested be kept confidential.

The opinion describes the standard used as follows:

> Besides giving advantages to competitors, a trade secret must also be treated as confidential by the business.... In Open Records Decision Nos. 198 and 184 we decided that information did not qualify for the 3(a)(10) exception when the businesses did not indicate what efforts, if any, had been made to keep the information confidential and there were no court decisions holding similar information to be trade secrets.

In ORD No. 292 (1981), the Attorney General held that a contract between the Texland Electric Cooperative and the Shell Oil Company is within the trade secrets exception. A copy of that opinion is attached as Examiner's Exhibit B.

In ORD No. 296 (1981), the Attorney General held that information provided to the City of Dallas' environmental department by a corporation was within the trade secret exemption. The opinion states: "The information was largely technical in nature and...related to raw material usage, production methods, and production and emission central processes and associated equipment." The Attorney General considered the following criteria:

> (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

A similar approach was used in ORD No. 426 (1985).

The examiner notes that in each of the above decisions, a detailed and persuasive showing was made with respect to each element of the applicable standard. (Cf ORD No. 203, in which taxicab financial and usage reports were held not to qualify for the trade secrets exemption in part because of a lack of evidence of a specific harm which would result from disclosure.)

C. Summary

In general, the examiner has applied the following principles in deciding whether or not particular documents qualify as legally protected trade secrets.

A trade secret privilege applies only where the holder thereof sells its goods or services in a competitive market and disclosure might harm the competitive enterprise. In this case, the privilege does not apply to GSU, but might to a third party which supplied the information to or contracted with GSU.

[3,4,5] Privileges are strictly construed. The party asserting the privilege has the burden of meeting each of its elements. The party must show that: (1) the type of information sought to be protected is the type contemplated by the trade secret privilege; and (2) specific harm would result from disclosure. With respect to type of information, a trade secret is a process or device for continuous use in the operation of the business which gives the owner an advantage over competitors who may not know or use it. Trade secrets generally arise in connection with the production of goods. Classic examples are machines or formulas. However, they may include contracts, compilations of information or financial records. A trade secret must not be in the public domain or generally known in the industry. The court may consider the staleness of the information. Information more than three years old has been held not to qualify for the privilege. However, the court must use its common sense in deciding this. In determining if information constitutes a trade secret, the court should consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the owner and to his competitors; (5) the amount of effort or money expended by the owner in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. With respect to showing of harm, the party must show that specific and serious harm would result from the disclosure. Conclusory statements to this effect are insufficient.

[6] Where a trade secret has been shown, the judge shall take such protective measure as the interest of the holder of the privilege and of the parties and the furtherance of justice may require. The trade secret should not be publicly disclosed except in such cases and to such extent as may appear to be indispensable for the ascertainment of truth. The protection to be afforded ordinarily is within the discretion of the trial court, and will not be disturbed unless an abuse of discretion is shown.

III. Rulings on Confidentiality

Many dozens of documents were alleged to be confidential. The examiner finds that all materials claimed by GSU or a third party to be legally protected from public disclosure are not so protected, and should be available for release to the public, except as expressly indicated otherwise below. The examiner finds that the following documents constitute a legally recognizable trade secret of a third party and should not be required to be available for disclosure to the public at this time. The document's location within the five boxes of documents claimed to be confidential is indicated in parentheses after the document's title.

1. Cogeneration Contract between GSU and Cogen Power, Inc. Dated September 1, 1984. (Tab G.)

2. Hay Associates, 1984 Executive Compensation Comparison: Utility/Industrial Management. (Box III.)

3. Sibson & Co., Inc., Special Utility Industrial Survey: Participants' Report. (Box III.)

4. Towers, Perrin, Forster & Crosby, Electric Utility Compensation Survey, 1984. (Box III.)

5. Edison Electric Institute, Executive Compensation Surveys and EEI updates thereto. (GSU's updates of the EEI study are held not to be confidential.) (Box III.)

6. S&W, Engineering Assurance Manual, Quality Assurance Directives, Quality Standards Manuals. (Tab. I.)

7. S&W, Integrated Management System Manuals. (Tab J.)

8. GE, River Bend Station Unit 1 Nuclear Design Reports, December 1984. (Tab S.)

As noted in part II. of this order, the legal standard is even more stringent with respect to protective measures governing documents on which the agency's decision is actually based. The examiner reserves the right to apply this different standard and to reconsider her rulings that the above documents are confidential in the event that they are placed in the record and she relies on them in making her substantive recommendations in this case.

IV. Revised Protective Order

A. Explanation

Since the examiner has found some of the documents or parts of documents in question to be legally protected, another protective order is needed. The following protective order is generally based upon the protective order dissolved by the Commission on January 8, 1986. As the examiner understood the Commission's decision, the problem was not so much most of the language of the order as the fact that it permitted nondisclosure to the public before documents were held to be confidential. The language used appeared to be generally acceptable to, and in fact was agreed to by most of, the parties. The examiner has made a few revisions to account for her concerns and those expressed by some parties, as well as changes in circumstances since the first protective order was entered.

B. Protective Order

1. Unless changed by subsequent order, this Protective Order shall be applied to materials found to be legally protected in Part III of Order No. 18, or, if different, those found to be legally protected by subsequent order of the Commission.

a. Such materials shall be referred to as "protected materials".

b. Protected materials shall also include any other documents or information supplied by or obtained from GSU that by subsequent order in this proceeding is made subject to the terms of this Protective Order.

c. However, protected materials shall not include any information or document contained in the public files of the Public Utility Commission of Texas, the Federal Energy Regulatory Commission or any other federal or state agency. Protected materials also shall not include documents or information which at the time of, or prior to, disclosure in these proceedings, is or was, public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

2. A "party" is a party to Public Utility Commission of Texas Docket Nos. 6477 and 6525.

3. Except as otherwise provided in this paragraph, a party shall be permitted access to protected materials only through its "authorized representatives." Authorized representatives of a party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the party and directly engaged in these proceedings.

4. Each person, except counsel, who inspects the protected materials shall first agree in writing to the following certification:

> I certify my understanding that the protected materials are provided to me pursuant to the terms and restrictions of the Protective Order in Public Utility Commission of Texas Docket Nos. 6477 and 6525, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the protected materials, and any notes, memoranda, or any other form of information regarding or derived from the protected materials, shall not be disclosed to any one other than in accordance with the Protective Order and shall be used only for the purpose of the proceeding in Docket Nos. 6477 and 6525. I acknowledge that the obligations imposed by this certification are pursuant to an order of the Public Utility Commission of Texas. Provided, however, if the information contained in the protected materials is obtained from independent sources, the understanding stated herein shall not apply.

A copy of each signed certification shall be provided to counsel for GSU. Any authorized representatives may disclose materials to any other person who is an authorized representative or is qualified to be an authorized representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to GSU, that certification shall be executed prior to any disclosure. In the event that any person to whom such protected materials are disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order for the duration thereof, even if no longer so engaged.

5. Except for protected materials which are voluminous, GSU shall provide a party one copy of the protected materials. A party may make further copies of reproduced materials for use in this proceeding pursuant to the Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and the party shall promptly provide GSU with a copy of that record. Parties may take handwritten notes or derive other information from the protected materials provided in response to this Paragraph 5.

6. a. Protected materials will be made available for inspection by parties at the offices of GSU in Beaumont, Texas, between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday (except holidays). Protected materials also will be made available at the office of Public Utility Counsel, 8140 Mopac, Westpark III, Suite 120, Austin, Texas. The protected materials may be reviewed only during the "reviewing period", which period shall commence upon issuance of the Protective Order, and continue until conclusion of these proceedings. As used in this paragraph, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law.

b. Parties may take handwritten notes regarding the information contained in protected materials made available for inspection pursuant to Paragraph 6(a), or they may make photographic or mechanical copies of the protected materials, provided, however, that before photographic or mechanical copies can be made, the party seeking photographic or mechanical copies must give written notice to counsel for GSU identifying each piece of protected material or portions thereof the party will need. Only one copy of the materials designated in the notice shall be reproduced. Parties shall make a diligent, good-faith effort to limit the amount of photographic or mechanical copying requested to only that which is essential for purposes of this proceeding. Notwithstanding the foregoing provisions of this Paragraph 6(b), a party may make further copies of reproduced materials for use in this proceeding pursuant to the Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and the party shall promptly provide GSU with a copy of that record. Only that information which is necessary to this proceeding may be extracted from these materials.

7. All protected materials shall be made available to the parties solely for the purpose of these proceedings. The protected materials, as well as the parties' notes, memoranda, or other information regarding, or derived from, the protected materials, are to be treated confidentially by the parties and shall not be disclosed or used by the party except as permitted and provided in this Protective Order. Information derived from or describing the protected materials shall not be placed in the public or general files of the parties except in accordance with provisions of this Protective Order. A party must take all reasonable precautions to ensure that protected materials, including handwritten notes and analyses made from protected materials, are not viewed or taken by any person other than an authorized representative of the party.

8. a. If a party tenders for filing any written testimony, exhibit, brief, or other submission that includes, incorporates, or refers to protected materials, all portions thereof referring to such materials shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the Presiding Examiner and served under seal only upon GSU and the parties. The Presiding Examiner may subsequently, on her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to protected materials is such that the written testimony, exhibit, brief or other submission should remain under seal.

b. If any party desires to include, utilize, or refer to any protected materials in testimony or exhibits during the hearing in such a manner that might require disclosure of such material, such party shall first notify both counsel for GSU and the Presiding Examiner of such desire, identifying with particularity each of the protected materials.

c. All protected materials filed with the Commission, the Presiding Examiner, any court, or any other judicial or administrative body in support of or as a part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers.

9. Each party shall have the right to seek changes in this Protective Order as appropriate from the Presiding Examiner, the Commission, or the courts.

10. In the event that the Presiding Examiner at any time in the course of this proceeding finds that all or part of the protected materials are not confidential, by finding, for example, that such materials have entered the public domain, those materials shall nevertheless be subject to the protection afforded by this Protective Order for one (1) full working day, unless otherwise ordered, from the date of issuance of the Presiding Examiner's decision or the date of issuance of a final and non-appealable Commission order denying an appeal filed within the one (1) full working day period from the Presiding Examiner's order. Neither GSU nor any reviewing party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

11. During the pendency of Docket Nos. 6477 and 6525 at the Public Utility Commission of Texas, in the event that a party wishes to disclose protected material to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as protected by alleging, for example, that such information or material has entered the public domain, such party shall first serve written notice of such proposed disclosure or request for change in designation upon counsel for GSU and the Presiding Examiner identifying with particularity each of such protected materials. In the event that GSU wishes to contest such proposed disclosure or request for change in designation, GSU shall file with the Commission its request for a prehearing conference within five working days after receiving such notice

of proposed disclosure or request for change in designation. Failure of GSU to file such a request within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. If GSU files such a request for a prehearing, the Presiding Examiner will determine whether the proposed disclosure or change in designation is appropriate. The burden is on GSU to show that such proposed disclosure or change in designation should not be made. If the Presiding Examiner determines that such proposed disclosure or change in designation should be made, such determination may not be effective earlier than one (1) full working day later, unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such Presiding Examiner's ruling.

12. Nothing in this Protective Order shall be construed as precluding GSU from objecting to the use of protected materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order shall be construed as an agreement by any party that the protected materials are entitled to confidential treatment.

13. All notices, applications, responses or other correspondence shall be made in a manner which protects the materials in issue from unauthorized disclosure.

14. Following the conclusion of these proceedings, as that term is defined in Paragraph 6(a), GSU will provide written notice to counsel for the parties advising each party that it must, no later than 30 days following conclusion of these proceedings, return to GSU all copies of the protected materials provided by GSU pursuant to this Protective Order and all copies reproduced by a party pursuant to Paragraphs 5 or 6(b), and that counsel for each party must provide to GSU a verified certification that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the protected materials (including copies of protected material) have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of protected material. Nothing in this paragraph shall prohibit counsel for each party from retaining two copies of any filed testimony, brief, application for rehearing, or other pleading which refers to protected materials provided that any such materials retained by counsel shall remain subject to the provisions of this Protective Order.

15. Notwithstanding any provision contained herein to the contrary, this Protective Order shall expire at the earlier of two (2) years from the date of issuance of the final Order in these Docket Nos. 6477 and 6525 or three (3) years from the date of this Protective Order unless such expiration date is extended by stipulation of the parties or by the Commission upon motion.

16. This Protective Order is subject to the requirements of the Open Records Act, the Open Meetings Act, and any other applicable law, provided that parties subject to those acts will give GSU prior notice, if possible under those acts, prior to disclosure pursuant to those acts.

V. Date on Which Documents Are to Be Released to the Parties or the Public

It is hereby ORDERED that GSU SHALL make available to the parties as soon as possible all documents found to be legally protected in Part III of this Order, subject to the Protective Order contained in Part IV of this order.

The examiner has struggled with the question of when GSU should be required to turn over the documents found not to be legally protected. As discussed in Part I of this order, there are three alternatives. First, the examiner could order that such documents be turned over to the parties immediately, with no requirement of nondisclosure to the public during the period in which GSU seeks an appeal, if any, from this order. Unfortunately, this would leave GSU as the only party denied any effective right to seek such an appeal, which right is provided for in P.U.C. PROC. R. 21.106(a). It would also effectively transfer from the Commission to this examiner the right to make the ultimate decision with respect to these documents, which is a result the examiner has no desire to accomplish. Second, the examiner could order that such documents be turned over to the parties immediately, with a requirement of nondisclosure to the public for a brief period to allow GSU to pursue an appeal if it wishes. This alternative is attractive in that the examiner knows that the parties want and need access to the documents immediately, but is aware of no similarly expressed desire at this time on the part of any other member of the public. This alternative also was agreed to by the staff and by all intervenors present at the prehearing conference except the Cities. The Cities correctly point out that this alternative is contrary to the Commission's directives in reversing the original protective order. Third, the examiner could provide that her order that such documents be turned over to the parties without any requirement of nondisclosure is not effective until some future date which allows GSU a short period of time in which to pursue an appeal. Unfortunately, this would delay the parties' access to such materials as well as that of the public. It would also produce the incongruous result that the parties could immediately see the documents which the examiner has held to be confidential but could not see those which she has found not to be.

The examiner chooses the second alternative in the hope that her good intentions will be taken into account. It is hereby ORDERED that GSU SHALL make available to the parties as soon as possible all documents found not to be legally protected in Part III of this Order. Until and unless provided otherwise by order of the Commission, such documents SHALL be subject to the Protective Order only until noon on Thursday, January 30, 1986, after which disclosure to the public SHALL be permitted.

SIGNED AT AUSTIN, TEXAS, on this the 22nd day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

bdb

Zenith Radio Corp. v. Matsushita Electric Industrial Co. Ltd., 529 F. Supp. 866 (E.D. Pa. 1981), aff'd in part, rev'd in part on other grounds, 723 F.2d 238 (3rd Cir. 1983).

matter category is broad enough to include a wide variety of business information, including the kinds of matters sought to be protected by defendants.[42]

[26c.212, 26c.352] Competitive disadvantage is a type of harm cognizable under Rule 26. Although the cases have not tried to identify competitive disadvantage as any one type of the three specific harms—annoyance, embarrassment or oppression—mentioned in Rule 26 which might subsume this harm, it is clear that a court may issue a protective order restricting disclosure of discovery materials to protect a party from being put at a competitive disadvantage. See, e.g., Parsons v. General Motors Corp., 85 FRD 724, 720 (ND Ga 1980); Vollert v. Summa Corp., 389 F Supp 1348 (D Hawaii 1975); Maritime Cinema Serv. Corp. v. Movies En Route, Inc., 60 FRD 587 (SD NY 1973); Borden Co. v. Sylk, 289 F Supp 847 (ED Pa 1968), appeal dismissed, 410 F2d 843 (3d Cir 1969).

The party seeking a protective order bears the burden of showing good cause for the order to issue. Reliance Ins. Co. v. Barron's, 428 F Supp 200 (SD NY 1977); Davis v. Romney, 55 FRD 337 (ED Pa 1972); Hunter v. International Sys. & Controls Corp., 51 FRD 251 (WD Mo 1970); Essex Wire Co. v. Eastern Elec. Sales Co., 46 FRD 308 (ED Pa 1969). In order to establish good cause, it must be shown that disclosure will work a clearly defined and serious injury, Essex Wire Co., supra; United States v. Lever Bros. Co., 193 F Supp 254 (SD NY 1961), cert denied, 371 US 932 (1962),[43] and that the party resisting disclosure "will indeed be harmed by disclosure." Johnson Foils, Inc. v. Huyck Corp., 61 FRD 405, 409 (ND NY 1973). Accord, Reliance Ins. Co., supra.

It has been held that in order to show good cause, the injury which allegedly will result from disclosure must be shown with specificity, and that conclusory statements to this effect are insufficient. United States v. Hooker Chem. &

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right. Because Rule 26(c)(7) reflected existing law under old Rule 30(b), we may look to cases decided under that Rule in considering the instant issues.

[42] See, e.g., Magnavox Co. v. Mattel, Inc., No. 80-4124 (ND Ill March 24, 1981) (agreements between patentee and licensee, patent sub-license agreements, and royalty reports); Chesa Int'l, Ltd. v. Fashion Assocs., Inc., 425 F Supp 234 (SD NY), aff'd mem, 578 F2d 1288 (2d Cir 1977) (customer list); Vollert v. Summa Corp., 389 F Supp 1348 (D Hawaii 1975) (financial records detailing capitalization, net worth, and annual income); Maritime Cinema Serv. Corp. v. Movies En Route, Inc., 60 FRD 587 (SD NY 1973) (license fees and oral contracts with customers); Spartanics, Ltd. v. Dyneties Eng'r Corp., 54 FRD 524 (ND Ill 1972) (information pertaining to market entry); Russ Stonier, Inc. v. Droz Wood Co., 52 FRD 232 (ED Pa 1971) (customer and supplier list); Corbett v. Free Press Assoc., 50 FRD 179 (D Vt 1970) (profit and gross income data); Essex Wire Corp. v. Eastern Elec. Sales Co., supra, (terms of contract); Hecht v. Pro-Football, Inc., 46 FRD 605 (D DC 1969) (financial statements); Borden Co. v. Sylk, 289 F Supp 847 (ED Pa 1968), appeal dismissed, 410 F2d 843 (3d Cir 1969) (prices charged and volume sold to customer); Turmenne v. White Consol. Indus., Inc., 266 F Supp 35 (D Mass 1967) (customer lists); American Oil Co. v. Pennsylvania Petrol. Prods. Co., 23 FRD 680 (DRI 1959) (lists of dissatisfied customers).

[43] "Very serious injury" was required in United States v. International Business Mach. Corp., 67 FRD 40 (SD NY 1975). Accord, Citicorp v. Interbank Card Ass'n, 478 F Supp 756 (SD NY 1979); Reliance Ins. Co., supra. We question the appropriateness of and necessity for this higher standard, under Rule 26(c)(7). We defer our consideration of what the First Amendment may require to Part IV, infra.

The "very serious injury" standard of United States v. IBM may be limited to the particular facts of that case. Judge Edelstein was confronted with a request that disclosure be limited in the face of the publicity in Taking Evidence Act, 15 USC § 30 (1970), which mandated that depositions taken in a suit brought by the United States under the antitrust laws be open to the public. That statute is of no effect in the case before us.

EXAMINER'S EXHIBIT A
Docket Nos. 6477 & 6525
Order No. 18

Plastics Corp., 90 FRD 421 (WD NY 1981); Rosenblatt v. Northwest Airlines, Inc., 54 FRD 21 (SD NY 1971); Hunter, supra; Technical Tape Corp. v. Minnesota Mining & Mfg. Co., 18 FRD 318 (SD NY 1955). It has also been held that the specific instances where disclosure will inflict a competitive disadvantage should be set forth in more than the briefs or the hearsay allegations of counsel's affidavit, for a protective order should not issue on that basis alone. See Reliance Ins. Co. v. Barron's, supra; Rosenblatt v. Northwest Airlines, Inc., supra; Apco Oil Corp. v. Certified Transp., Inc., 46 FRD 428, 432 (D Mo 1969); Paul v. Sinnott, 217 F Supp 84 (WD Pa 1963). We think, however, that hard and fast rules in this area are inappropriate. Frequently the injury that would flow from disclosure is patent, either from consideration of the documents alone or against the court's understanding of the background facts. The court's common sense is a helpful guide.

An attempt to show that disclosure will indeed work a competitive disadvantage might be undermined if the information sought to be protected were stale. There is a paucity of case law in the area. In Vollert v. Summa Corp., supra, and Hecht v. Pro-Football, Inc., 46 FRD 605 (DDC 1969), information up to three years old was held entitled to confidentiality and a court's attendant protection. On the other hand, in United States v. International Business Mach. Corp., 67 FRD 40 (SD NY 1975), information three to fifteen years old was held not entitled to protection because, in the court's view, it revealed little, if anything, about the contemporary operations of the party resisting disclosure. For the same reason, United States v. Lever Bros. Co., supra, held that information three to eight years old should not be protected. Indeed, in Rosenblatt v. Northwest Airlines, Inc., supra, the need for a court's protection was held to be diminished because the information sought to be protected was one year old.

Notwithstanding the conclusions in these cases, it is terribly difficult to establish, on any principled basis, temporal boundaries governing the protection to be accorded information. While at first blush one might doubt that harm could be caused by the disclosure of stale information, there is sense in the argument, which defendants urge, that old business data may be extrapolated and interpreted to reveal a business' current strategy, strengths, and weaknesses.[44] It would appear that, in the hands of an able and shrewd competitor, old data could indeed be used for competitive purposes.

Finally, a protective order should always be narrowly drawn. Two considerations mandate this constraint. First, an overbroad protective order may constitute an abuse of discretion by exceeding the authority granted by Rule 26. Cf. Gulf Oil Co. v. Bernard, — US —, 101 S Ct 2193 (1981) (order that banned all communications, without prior approval of court, concerning class action between parties or their counsel and any actual or potential class member who was not a formal party, entered without findings of fact or explanatory opinion, exceeded bounds of discretion under Rule 23(d)). Even when a court acts within the bounds of discretion set by Rule 26(c), its actions should be informed by the second consideration mandating a narrowly drawn order, the

---

[44] Compare Timken Co. v. United States Customs Serv., No. 79-2545 (D DC April 25, 1981) (Freedom of Information Act exemption case): four affidavits established a sufficient basis for the court to find that release of pre-1973 information in 1981 would cause substantial harm to the competitive position of the companies from which it was obtained.

"It would allow competition to discern the strengths and weaknesses of the marketing strategies of these companies and target their weak points for attack. Competitors also could imitate the successful policies of these companies. Further, customer relations likely would be disrupted by the breach of confidentiality and increased competition from competitors." Id., Slip Op at 2.

First Amendment overbreadth doctrine. This doctrine, along with the other First Amendment issues pressed upon us by plaintiffs, is considered in detail in Part IV, infra.

B. The Validity of Pretrial Order 35

[26c.352] We find that PTO 35 is valid under Rule 26(c)(7). We reach that conclusion because: (1) the material that it protects is confidential commercial information; (2) the harm that it seeks to prevent is cognizable under Rule 26(c); and, (3) both at the time it was entered and at the present time, defendants (as well as plaintiffs) have shown good cause for the protective order to issue. It is plain from a reading of both the NUE and Zenith complaints, which spanned the law of antitrust and focused on defendants' price behavior, that large quantities of sensitive commercial data would be sought in discovery. That prospect in fact materialized, as our description of some of the price data generated in discovery makes clear. Thus, the propriety of some form of umbrella protective order was never seriously in doubt.

The affidavits filed by defendants to support continued enforcement of PTO 35[45] do not detail the harm which would result from disclosure on a document-by-document basis. Rather, they describe the harm which would result from the disclosure of discrete categories of information. We find that the affidavits are consistent with our knowledge of the material at issue. We are also satisfied that by describing the harm which would result from the disclosure of categories of information defendants have shown good cause. In reviewing other cases in which a protective order has issued,[46] we find that those courts discussed categories of information such as customer, supplier, and price lists; financial records; and contract terms; the very categories present here. Only rarely were individual documents subjected to a Rule 26(c) analysis. This case is distinguished from the usual Rule 26(c) case only in that the categories involved here contain much, much larger numbers of documents. Grouping huge amounts of cumbersome data into manageable categories for the purpose of supporting a Rule 26(c) order is desirable from the standpoint of case management and is consistent with the instruction of Rule 1 that the Rules of Civil Procedure shall be construed to secure the "just, speedy, and inexpensive determination of every action."

We also conclude that PTO 35 comes well within the bounds of discretion established by Rule 26. By its terms, PTO 35 applies only to material protectible under Rule 26—materials which "relate to trade secrets, or other confidential research, development or commercial information, as such terms have been defined pursuant to Rule 26(c)(7) of the Federal Rules of Civil Procedure." PTO 35 does not shift the burden of proof, but requires that, upon objection, the party electing to classify information justify its action pursuant to the Federal Rules of Civil Procedure. Finally, PTO 35's appeals process insulates the order against the danger that its provisions may sweep too broadly. Any party objecting to a confidentiality classification may request a determination of a particular document's entitlement to protection under Rule 26(c).

The need for PTO 35 is not diminished by our disposition of defendants' summary judgment motion. We have defendants' counterclaim still before us for eventual trial. Moreover, our summary judgment order may not have undercut

[45] See notes 21 and 22 supra.
[46] See cases cited in note 41 supra.

The Attorney General of Texas

GBM

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Attorney General

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4309 N. Tenth, Suite B
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200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

An Equal Opportunity/
Affirmative Action Employer

December 8, 1981

Honorable Elos Soderberg
General Manager
Lower Colorado River Authority
P. O. Box 220
Austin, Texas 78767

Open Records Decision No. 292

Re: Whether contract held by the LCRA under an agreement to maintain confidentiality is excepted from public disclosure under the Open Records Act

Dear Mr. Soderberg:

You have received a formal request under the Open Records Act, article 6252-17a, V.T.C.S., for a copy of a certain contract in your possession. This contract is between the Texland Electric Cooperative and the Shell Oil Company. You ask whether it must be released.

Because our answer turns upon the particular facts set out in various materials submitted to this office, we will recite those facts in some detail. Prior to obtaining a copy of the contract in question, the Lower Colorado River Authority (hereinafter "LCRA") engaged in extended negotiations with Texland concerning its proposed lignite-fired electric generating plant. In order to determine the viability of such a plant, LCRA sought, among other things, to examine its source of fuel. Upon ascertaining that Texland had entered into a contract with Shell Oil Company for the supply of lignite, LCRA requested a copy of that contract so that it could review the information contained therein. Initially, Shell objected to the release of this contract; after extensive negotiations, however, Shell and Texland agreed, subject to LCRA's express promise to maintain the confidentiality of the contract, to let LCRA review it to determine the economic feasibility of the Texland plant and to decide whether to join in the project. As of the date of your request letter, LCRA had not completed its evaluation and therefore had not entered into any contractual arrangement with either Texland or Shell. We understand that this state of facts has not since changed.

In a brief submitted to this office, counsel for Shell makes the following points:

1. The contract and its exhibits contain very sensitive information such as the price of

EXAMINER'S EXHIBIT B
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Order No. 18

> lignite, the pricing structure utilized by Shell, price escalation mechanisms, data concerning the quantity and quality of reserves, information pertaining to the quantity and quality of deliveries to be made under the contract and technical matters involving mine operations.
>
> 2. Shell does not customarily reveal its sales contracts or their contents and, without exception, includes a confidentiality provision in them.
>
> 3. Shell was not obligated to furnish the contract to LCRA and would not have done so without assurances that it would be held in confidence.
>
> ....
>
> 5. The gulf coast lignite market is just opening up. The contract is the first one if its kind in the state of Texas. To make it available to the public under [the Open Records Act] would severely damage Shell's competitive position in the gulf coast lignite market place.

A copy of the confidentiality agreement between LCRA and Shell was also submitted.

We believe Open Records Decision No. 256 (1980) is dispositive of this matter. That decision involved a job market survey undertaken by the city of Dallas to determine whether the salaries it paid to photographers and darkroom technicians were comparable to salaries in private industry. Part of the materials in question were longhand notes reflecting wage rate information acquired from the employers who were contacted.

Open Records Decision No. 256 concluded that this information was excepted from disclosure under section 3(a)(10) of the Open Records Act, as:

> trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or by judicial decision.

The decision relied primarily upon National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974), a leading case involving the Federal Freedom of Information Act which

established the following standard for determining the confidentiality of commercial and financial information:

> [C]ommercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

Id. at 770. In support of its contention that the longhand notes could be withheld, the city argued that no city ordinance required private employers to cooperate with city officials in a job market survey, that each employer was assured that the confidentiality of his answers would be maintained, and that the city could not conduct complete job market surveys in the future if companies knew that salary data was disclosable. Open Records Decision No. 256 concluded that inasmuch as the release of information reflecting wage rates paid by individual employers was likely to impair the city's ability to obtain essential information in the future, the longhand notes reflecting this information could be withheld.

We believe the reasoning of Open Records Decision No. 256 and the National Parks case is applicable in this instance. There can be no question that LCRA must be able to acquire this type of information in order properly to perform its duties in serving the public. It is also abundantly clear that, but for the confidentiality agreement, LCRA would never have acquired a copy of this contract for review. Our examination of the copy of the contract that you submitted and our assessment of the particular facts here involved convince us that both of the standards set forth in the National Parks case have been met in this instance. We therefore conclude that you need not release the copy of the contract in your possession.

Very truly yours,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Walter Davis
Rick Gilpin
Jim Moellinger

DOCKET NOS. 6477 and 6525

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1986 JAN 24 PM 1:33
PUBLIC UTILITY COMMISSION
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INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY

APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 20

ORDER RULING ON DISCOVERY DISPUTES AND AMENDING ORDER NO. 18

I. Discovery Disputes

The fifth prehearing conference in this docket was held on January 13 and 14, 1986 for the purpose of considering pending discovery disputes and motions. Disputes concerning Gulf States Utilities Company's (GSU) First Request for Information (RFI) from Staff and Intervenors, argued on January 14, 1986, are resolved herein. At the prehearing conference on January 14, 1986, appearances were entered by George Avery for GSU, Peter Brickfield for North Star Steel Texas, Inc., Walter Washington for the Office of Public Utility Counsel (OPC), Steven A. Porter for numerous cities (the Cities), W. Scott McCollough of the Attorney General's Office for certain state agencies (the State Agencies), and Alfred R. Herrera of the Commission's General Counsel Office for the public interest.

Only the questions discussed below remained in dispute on January 14, 1986. To the extent that an objection is overruled, the response or supplemental response shall be submitted at the time of prefiling of the responding party's testimony. Where the party has offered some alternative in its objections or oral argument, such as making documents available instead of providing a copy, or answering a question in a particular way, an indication that an objection is sustained or sustained in part should be interpreted as requiring the objecting party to comply with that offer.

A. Cities' Objections to GSU's First RFI

Instruction 1(b). Objection sustained. Cities may interpret instruction to refer only to persons working on this rate case for or on behalf of the Cities.

Instruction 2. Objection sustained. This might be appropriate with reference to a specific question but as a general instruction for application to all questions is inappropriate.

Instruction 11. Objection overruled, unless otherwise indicated with reference to a specific question. (Texas Rules of Civil Procedure Rule 166b.2.b.). Where information appears to be only of marginal relevance or usefulness the examiner has limited some RFIs to "actual possession".

Instruction 12. Objection sustained. See instruction 2.

Instruction 18. Objection sustained.

Instruction 2(a). Objection sustained in part. The Cities shall indicate the general subject of the witness' testimony, if known (e.g., accounting, cost allocation).

Question 2(c). Objection sustained in part. In addition to the response the Cities have offered to make, they shall make available to GSU copies of all such testimony and transcripts in their or in their witness' actual possession.

Question 2(e). Objection sustained in part. The Cities shall indicate under what circumstances, if any, the Cities would be able to make their witnesses available for interview or discussion (as opposed to formal deposition) with GSU's representatives. The Cities need not explain their reasoning.

Question 3(a). Objection sustained.

Question 3(b), 3(c) and 3(d). Objection sustained in part. In addition to the response the Cities have offered to provide, if the witness is offering testimony in this proceeding about the subject matter of the question, the Cities shall indicate the identities requested, if any, and make available to GSU the requested copies, and, for 3(d), comparisons, if such copies and comparisons exist and are within their or their witness' actual possession.

Question 3(e), 3(f), 3(g) and 3(h). Objection sustained in part. If the witness is offering testimony in this proceeding about the subject matter of the question, the Cities shall make available to GSU the information requested if it presently exists and is within their or their witness' actual possession.

Question 3(i). Objection sustained.

Questions 4 through 7, 13, 14, and 16 through 21, 22, 23(b) and (c). Objection sustained.

Question 25. Objection sustained in part. It is unclear to the examiner what the Cities are offering to provide. The Cities shall make available the actual computer runs used by its witnesses in connection with their testimony in this proceeding.

Question 26 through 33. Objection sustained.

B. OPC's Objections to GSU's First RFI

Question 4 through 7, 14 and 28 through 33. Objection sustained.

C. General Counsel's Objections to GSU's First RFI

Question 2(b) and 2(c). Objection sustained.

Question 2(e) and 3(·). Objection sustained in part. See ruling on these questions for the Cities.

Question 3(i), 4 through 7, 13, 16, and 28 through 33. Objection sustained.

II. Amendment of Order No. 18

In Order No. 18, the examiner held certain Edison Electric Institute (EEI) Executive Compensation Surveys and updates thereto to be confidential. Upon further reflection, the examiner is of the opinion that this ruling was erroneous in light of the standard described in that order which she applied to the other documents. Order No. 18 is hereby AMENDED to delete item no. 5 from Part III of the order. The deadlines and procedures applicable to documents found not to be confidential and described in Order No. 18 SHALL also apply to the EEI studies. However, the parties' deadline for appealing this order under the Commission's rules shall be calculated from the date of the present order. If GSU wishes this amendment to be considered with its appeal of Order No. 18, it should simply supplement its appeal to so indicate.

SIGNED AT AUSTIN, TEXAS on this the 24th day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

ls

DOCKET NOS. 6477 and 6525

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1986 JAN 22 AM 10:19 PUBLIC UTILITY COMMISSION

PUBLIC UTILITY COMMISSION OF TEXAS
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INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY

APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 22

ORDER RULING ON CONFIDENTIALITY OF DISCOVERY DOCUMENTS, ESTABLISHING A DEADLINE FOR RESPONDING TO MOTIONS FOR SUBPOENA, AND DISCUSSING MOTION TO INTERVENE, AND ORDER NUNC PRO TUNC

The sixth prehearing conference in this case was held on Friday, January 24, 1986. Appearances were entered by the following persons: George Avery, Cecil Johnson and Don Clements for Gulf States Utilities Company (GSU); Rex VanMiddlesworth for Texas Industrial Energy Consumers; Scott McCollough for the state agency customers of GSU (State Agencies); Jim Boyle and Walter Washington for the Office of Public Utility Counsel (OPC); Steve Porter for numerous cities (the Cities); Richard Ferguson for the Cities of Sour Lake, Nome and China; and Alfred R. Herrera of the Commission General Counsel's Office for the public interest. Tom Stevens appeared for General Electric (GE), which is not a party to the case.

Only GSU's second motion for protective order is ruled on in this order. All of GSU's pending objections to other parties' requests for information (RFI) were resolved by negotiation or deferred by agreement of the parties. Various motions also argued at the prehearing conference will be ruled on by subsequent order. However, a deadline for Houston Lighting and Power Company (HL&P) to respond to the motions for subpoena of certain HL&P employees is established herein.

I. Confidentiality Disputes

On January 24, 1986, GSU filed its second motion for protective order. By agreement of the parties, the procedures utilized at the January 13, 1986 prehearing conference at which the confidentiality of various documents was argued also governed consideration of the documents listed in GSU's second motion, which are ruled on in this order. The parties' arguments in connection with that prehearing conference were also applied to these documents. In addition, the examiner has considered oral arguments at the January 24, 1986 prehearing conference, the approximately six inches of documents she has reviewed in camera, and GSU's second motion for protective order and the five affidavits attached thereto. In the present order, the examiner has utilized the same standard as that set forth in Order No. 18. The procedures, standard and other matters are discussed in Order No. 18, which is incorporated by reference in the present order. GSU indicated that the documents ruled on herein have not been provided to the parties. Together with documents ruled on in Order No. 18, these documents constitute all materials requested in RFIs in this case which GSU claims to be confidential.

The examiner finds that all materials claimed by GSU or a third party to be legally protected from public disclosure are not so protected, and should be available for release to the public, except as expressly indicated otherwise below. The examiner finds that the following documents constitute a legally recognizable trade secret of a third party and should not be required to be available for disclosure to the public at this time:

1. Documents indicating the logic contained in the computer program used by TLG Engineering to perform its decommissioning study (Tab D).

As noted in Order No. 18, the legal standard is even more stringent with respect to protective measures governing documents on which the agency's decision is actually based. The examiner reserves the right to apply this different standard and to reconsider her rulings that the above documents are confidential in the event that they are placed in the record and she relies on them in making her substantive recommendations in this case.

At the prehearing conference Mr. Porter requested that a copy of the documents contained in Tab D, if found to be protected, be provided under protective order to the Cities' consultant, Mr. Powe of R.W. Beck. The reason is that Mr. Powe will need to spend many hours with them. On January 27, 1986, counsel for GSU notified the examiner by telephone that they would not object to this proposal. Mr. Porter's request is hereby GRANTED.

The examiner notes that GSU affiant Judith Moses requested that GSU be allowed to delete the customer names in the interruptible service contracts contained in Tab B. The Cities indicated that this would be acceptable, and no party expressed opposition to this proposal. GSU's request seems appropriate to the examiner, and is hereby GRANTED. The examiner notes that additional customer-specific information is also called for in the form contracts to which the same rationale for deletion appears to apply. It is therefore ORDERED that GSU may also delete the information filling in the second blank in Article II of each contract which indicates the location of the customer's premises, and any other reference to the customer's location or address, or to the name of an official or employee of the customer. GSU SHALL delete only the information described above.

It is hereby ORDERED that GSU SHALL make available to the parties as soon as possible all documents found to be legally protected in this Order, subject to the Protective Order contained in Order No. 18. It is further ORDERED that GSU SHALL make available to the parties as soon as possible all documents found not to be legally protected in this Order. Until and unless provided otherwise by order of the Commission, documents found not to be legally protected in this Order SHALL be subject to the Protective Order contained in Order No. 18 until noon on Friday, February 7, 1986, after which disclosure to the public SHALL be permitted.

II. Deadline for Responding to Motions for Subpoena

On January 16, 1986, OPC and the general counsel filed motions for the issuance of a subpoena for the taking of the deposition of J. D. Guy and Eugene Simmons, and for a subpoena duces tecum of certain documents in connection with Mr. Simmons' deposition. Copies of these motions are attached to HL&P's copy of this order. Mr. Guy and Mr. Simmons are HL&P officials. OPC indicated that HL&P was notified of these motions. HL&P did not appear at the January 24, 1986 prehearing conference. No party to this case expressed opposition to the motions. At the prehearing conference, OPC indicated that the time for both depositions had been set for Friday, February 7, 1986 at 9:30 a.m. It is hereby ORDERED that if HL&P objects to these motions, it shall indicate and explain its objections by written filing no later than noon on Monday, February 3, 1986. A copy of this order has been sent to:

Mr. George Schalles
Houston Lighting and Power Company
P.O. Box 1700
Houston, Texas 77001

III. Motion to Intervene

On January 24, 1986, Concerned Utility Rate Payers Association, Inc. filed a motion to intervene. A copy is attached. This motion will be ruled on in accordance with the procedures set forth in Order No. 4.

IV. Order Nunc Pro Tunc

The examiner signed one order in this case dated January 24, 1985 and another on January 27, 1985. Unfortunately, both orders were numbered "Order No. 20". The January 27, 1985 order respecting disposition of unclaimed fuel refunds is hereby RENUMBERED Order No. 21. The parties are urged to renumber their copies of this order and to refer to it in the future as Order No. 21. The examiner apologizes for the confusion.

SIGNED AT AUSTIN, TEXAS, on this the 28th day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

bdb

DOCKET NO. 6525

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APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	§ § §	PUBLIC UTILITY COMMISSION OF TEXAS

PETITION FOR LEAVE TO INTERVENE

NOW COMES Concerned Utility Rate Payers Association, Inc., hereinafter "Petitioner", pursuant to the Public Utility Regulatory Act, TEX. REV. CIV. STAT. ANN. art. 1446c (Supp. 1984), and Sections 21.41, 21.42, 21.44, 21.62 and 21.64 of the Commisssion's Rules of Practice and Procedure, and files this its Petition to Intervene as a party in the above referenced docket and in support thereof would respectfully show the following:

1.

The name and address of Petitioner is as follows:

Concerned Utility Rate Payers Association, Inc.
P.O. Box 1577
Bridge City, Texas 77611

2.

The name, address and telephone number of the persons representing Petitioner are:

W. H. Reid, President of Concerned Utility Rate Payers Association, Inc.
3000 MacArthur Drive, Apt. 156
Orange, TX 77630
(409)883-5515

3.

The jurisdiction of the Commission over the parties and subject matter is pursuant to TEX. REV. CIV. STAT. ANN. art. 1446c.

4.

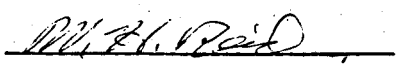
Gulf States Utilities has filed an application for an increase in rates concurrently before the Public Utility Commission and the various City regulatory authorities.

5.

Petitioner alleges that the members of its organization will be adversely affected by an increase in rates, and herein requests that the Applicant be required to meet its burden of proof as to each and every element of the proposed rates.

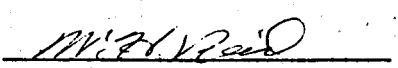
The Petitioner is an organization consisting of Gulf States Utilities' ratepayers within the state of Texas. As such they are vitally concerned with the rates in question in this Docket. Petitioner seeks intervention in order to insure that its interests are brought before the Commission and to enable it to participate in the setting of reasonable rates for Gulf States Utilities.

Respectfully submitted,



CERTIFICATE OF SERVICE

Petitioner hereby certifies that a copy of this Petition has been mailed to the Hearings Division of the Public Utility Commission, the General Counsel of the Public Utility Commission and to counsel for Applicant.



DOCKET NOS. 6477 and 6525

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PUBLIC UTILITY COMMISSION
OF TEXAS

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	§
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	§

ORDER

In a 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 Commission considered appeals by Gulf States Utilities Company (GSU) of those portions of examiner's order number 18, of the amendment of that order discussed in order number 20, and of order number 22, which hold that documents claimed by GSU to be confidential should not be covered by a protective order. These appeals are hereby DENIED for lack of merit. The Commission specifically finds that GSU has not shown that its costs or rates will increase if the documents are disclosed to the public.

SIGNED AT AUSTIN, TEXAS, on this the 6th day of February 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

PEGGY ROSSON

DENNIS THOMAS

JO CAMPBELL

ATTEST:

RHONDA COLBERT RYAN
SECRETARY TO THE COMMISSION

bdb

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY

APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES

DOCKET NOS. 6477and 6525

February 19, 1986

Order reversed, and Unclaimed Property Law found not to apply to unclaimed fuel cost overrecovery refunds.

[1] RATEMAKING - COST OF SERVICE - FUEL AND PURCHASED POWER - REFUNDS

The Unclaimed Property Law does not apply to the unclaimed portion of refunds implemented pursuant to an examiner's order, because an examiner cannot by interim order create a vested property right in the refunds.

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY

APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. ~~20~~ 21

ORDER RULING ON DISPOSITION OF UNCLAIMED FUEL COST OVERRECOVERY REFUNDS

I. Procedural Background

On October 16, 1985, Gulf States Utilities Company (GSU) filed a motion to refund to its customers past overrecoveries of fuel costs. The motion was resolved by stipulation as to all issues except one. The disputed issue is whether the Commission lawfully can order that unclaimed refunds must be distributed to GSU's Project Care, or whether that issue is controlled by the State laws regarding escheat.

The disputed issue was orally argued before the examiner on October 29, 1985. The following persons appeared: Donald M. Clements for GSU; Jonathan Day for Texas Industrial Energy Consumers; W. Scott McCollough of the Attorney General's office for the State Agencies; Jim Boyle for the Office of Public Utility Counsel; and Alfred R. Herrera of the Commission General Counsel's office for the public interest. Mr. McCollough argued that the state escheat laws are controlling. Mr. Clements and Mr. Boyle argued to the contrary. The parties agreed that under the stipulation, the issue need not be resolved for some time, that it should not delay adoption of the stipulation, and that briefing the issue would be appropriate.

GSU and the State Treasurer, which had intervened on this one issue, filed briefs on December 2, 1985, and reply briefs on December 9, 1985.

On December 16, 1985, GSU wrote a letter to Commission Executive Director Richard Galligan indicating that GSU intends to postpone transferring to Project Care the unclaimed refunds which arose from a previous case, Docket No. 6376. The examiner is not ruling as to Docket No. 6376, since the issue is not properly before her. No motion has been filed, and the examiner is without authority to review in this docket an unappealed final order of the Commission in a previous docket.

II. The Stipulation

The disputed issue concerns only customers other than large industrial service (LIS) and large power service (LPS). The following description applies only to consumers who are not LIS or LPS customers.

Under the stipulation, the refund was allocated to each rate class on a month-to-month basis according to each class's kilowatt-hour (kwh) usage during each month of the refund period, which is August 1, 1985 through September 30, 1985. The refund was made by a credit on the first bill issued in the first complete GSU billing cycle after approval of the stipulation. The credit was the class refund factor times the customer's individual kwh usage during the refund period at that customer's point of service on the date of such billing.

The disputed issue concerns unclaimed refunds of customers who were not LIS or LPS customers during the refund period and who, during the first billing cycle after approval of the stipulation, either were not served by GSU or were served at a different address. Under the stipulation, by a one-time bill insert and by three weeks newspaper publication, GSU gave notice that a refund may be due such customers if such customers promptly contacted GSU in the manner set forth in the notice. To be eligible for a refund, which would be by check, such customers were required to respond within sixty days after the mailing or publication of the notice by providing to GSU sufficient information to permit GSU to establish and verify their pertinent usage and location. Any refund amounts that might otherwise be due such customers who failed to respond timely to the notices were to be transferred by GSU to Project Care for GSU's Texas service area.

III. Examiner's Conclusions

The State Agencies argue that the disputed provision in the stipulation would violate the Texas escheat law, Tex. Prop. Code tit. 6 (Vernon Supp. 1986). With regret, the examiner agrees.

Tex. Prop. Code tit. 6 ch. 72 relates to abandonment of personal property. Tex. Prop. Code tit. 6 Sec. 72.001 (b) provides: "This chapter applies to tangible and intangible personal property held in this State and to tangible and intangible personal property held outside this State for a person whose last known address is in this State." The disputed issue raises two basic questions. First, does Tex. Prop. Code tit. 6 ch. 72 apply to personal property of others held by public utilities? Second, are the unclaimed refunds personal property within the meaning of this chapter?

A. Does Tex. Prop. Code tit. 6 ch. 72 apply to personal property of others held by public utilities?

The examiner concludes that Tex. Prop. Code tit. 6 ch. 72 does apply to the personal property of others held by a public utility, for several reasons.

First, several of the cases that have arisen under Ch. 72 have involved electric utilities holding others' unclaimed personal property such as dividends, funds for redemption of stocks or bonds, customer deposits and interest thereon, wages, and deductions from employees' salaries. (See, e.g., State v. El Paso Electric Company, 402 S.W.2d 807 (Tex. Civ. App. - El Paso 1966, writ ref'd n.r.e.); Central Power and Light Co. v. State, 410 S.W.2d 18 (Tex. Civ. App. - Corpus Christi 1966, writ ref'd n.r.e.) and State v. Texas Electric Service Company, 488 S.W.2d 878 (Tex. Civ. App. - Fort Worth 1972, no writ.)

Second, Sec. 72.001(f) provides:

> (f) In this chapter, a holder is a person, wherever organized or domiciled, who is:
>
> (1) in possession of property that belongs to another;
> (2) a trustee; or
> (3) indebted to another on an obligation.

Electric utilities appear to be within this definition.

The examiner notes that as amended in 1975, Sec. 72.001(d) provides: "This chapter applies to property held by life insurance companies with the exception of unclaimed funds, as defined by Section 3, Article 4.08, Insurance Code, held by those companies that are subject to Article 4.08, Insurance Code. One could argue that this language means that Ch.72 applies only to life insurance companies. The examiner does not so conclude. First, such an interpretation would be difficult to reconcile with Sec. 72.001(f), quoted above. Moreover, Ch. 72 also applies to unclaimed travelers checks and money orders, which are not ordinarily issued by life insurance companies. Second, in the past, Ch. 72 expressly did not apply to life insurance companies. It appears that Sec. 72.001(d) was simply intended to make Ch. 72 applicable to life insurance companies in addition to other entities.

B. Are the unclaimed fuel overrecovery refunds personal property under Tex. Prop. Code tit. 6 ch. 72?

The terms "property" and "personal property" are not expressly defined in tit. 6. By way of rough definition, the examiner has interpreted the terms to refer to property, other than real property, which is an identifiable item or amount, to which a particular person or entity has or had a present entitlement.

Most of the ch. 72 cases involve personal property which the owner acquired the right to by contract, indebtedness or statute. One unusual aspect of the present case is that each customer acquired ownership of the property, in the sense of present entitlement to a specific amount, only when the order approving that portion of the stipulation was entered. The examiner was unable to find a Texas case involving this type of property. However, there is a 1948 Texas Attorney General Opinion involving a situation where taxes were levied and collected to pay interest and to create a sinking fund to pay the bonds of a road district. The

The road district was abolished, and no bonds were issued. Judgment was rendered by a district court ordering officials and the depository to refund the tax money pro rata to persons who paid it. However, a certain sum was not claimed for a period of 27 years, and those who were entitled to receive it could not be ascertained by reasonable diligence. The Attorney General concluded that the sum was subject to escheat proceedings by the State. (Op. Atty. Gen. 1948, No. V-639.) Tex. Prop. Code tit. 6 ch. 72 is not by its terms limited to property to which the entitlement was created in some specific way, such as by contract. The examiner concludes that if a fuel cost overrecovery refund is an identifiable item or amount to which a particular customer acquired a present entitlement by order of the Commission, it can constitute personal property within the meaning of Tex. Prop. Code tit. 6 ch. 72.

GSU argued that the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986) gives the Commission the power to determine the method of disposition of unclaimed fuel cost overrecoveries. PURA section 16(a) provides: "The Commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction." The Commission has jurisdiction over GSU's rates. (PURA section 37.) It has the power to determine the manner in which and extent to which fuel costs will be recovered. (PURA section 43(g).) By implication it has the authority to order refunds and to determine the methodology and procedures to be used. By choosing a particular mechanism or procedure, the Commission effectively can determine whether a particular customer receives a refund or not and if so, in what amount. The question is, having already determined that an individual customer is entitled to a specific amount, can the Commission go further and specify who is to get the money if the customer does not claim it? If there were no escheat law, such power might be implied. However, the examiner must agree with the State Treasurer that the escheat law controls, because it mandates a specific and express mechanism, whereas the PURA provides only a broad grant of power from which the Commission's authority to order a different result than that provided by the escheat law would have to be implied.

GSU states that an individual customer has no independent legal right to a refund absent a Commission order, and argues that, this being the case, the Commission can make the refund dependent upon the terms of the order. If the order provides for a contingent distribution of funds such as transferring the amounts to Project Care, GSU contends, then the terms of the order control and there is no fund to escheat to the State.

The examiner need not decide the merit of GSU's argument in general, because in this particular case, the assumption does not apply. Pursuant to agreement of the parties, the examiner ordered the refunds in October, but did not rule on the issue of disposition of unclaimed refunds. While the examiner doubts that either she or the parties had thought through any possible implications of this timetable for the disputed issue, she cannot ignore the fact that in this case the entitlements have been established and the refunds made without the "condition" relating to uncla[illegible] refunds being included.

The State Treasurer points out that its position is supported by two decisions from other jurisdictious. In Cory v. Public Utilities Commission, 658 P.2d 749 (Cal. 1983), the California Supreme Court overturned a decision by that State's utility regulatory agency which provided that unclaimed refunds payable by a telephone utility shall be distributed pro rata to its current customers. The court held that the refunds must be paid to the State under the California escheat law. The opinion states:

> The Commission is not authorized to forfeit the refunds of the unlocated customers, and the property should be held for the benefit of the unlocated customers and for the use of the state in accordance with the Unclaimed Property Law. There is no more reason to allocate the unclaimed rate refunds to current telephone customers than there would be for a bank to allocate unclaimed property to its current customers.

The Florida Supreme Court reached the same result in Lewis v. Public Service Commission, 463 So.2d 277 (Fla. 1985).

The examiner does not approve the second and fourth sentences of paragraph 5 of the stipulation. Unclaimed refunds shall be governed by the Texas escheat laws.

SIGNED AT AUSTIN, TEXAS on this the 27th day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	§	PUBLIC UTILITY COMMISSION OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	§	

ORDER

[1] In a 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 Commission considered appeals of examiner's Order No. 21 concerning disposition of unclaimed fuel refunds. This order is hereby REVERSED. The Commission finds that the examiner could not by interim order create a vested property right in the refunds. The examiner is instructed to include in her examiner's report a recommended mechanism which would allow the unclaimed refunds to be distributed to GSU's current ratepayers on a pro rata basis after a final order is entered in this case.

SIGNED AT AUSTIN, TEXAS on this the 19th day of February 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Dennis L. Thomas
DENNIS L. THOMAS

SIGNED: Jo Campbell
JO CAMPBELL

I dissent. I would uphold Order No. 21.

SIGNED: Peggy Rosson
PEGGY ROSSON

ATTEST:

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

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INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL.	DOCKET NOS. 6477, 6525 and 6660

April 4, 1986

Utility's fuel factor reduced and fuel cost overrecoveries ordered.

[1] RATEMAKING - COST OF SERVICE - FUEL AND PURCHASED POWER - REFUNDS

P.U.C. SUBST. R. 23.23 contemplates reductions of fuel factors and refunds of fuel cost over-recoveries without hearing, subject to reconciliation, so that customers can receive the benefits of reduced fuel costs as rapidly as possible.

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	<	PUBLIC UTILITY COMMISSION OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	<	
APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES EL AL.	<	

ORDER

In open meeting at its offices in Austin, Texas, on April 3, 1986, the Public Utility Commission of Texas (Commission) met to consider the petition filed by Gulf States Utilities Company (GSU) on February 28, 1986 in Docket Nos. 6477, 6525, and 6660, to establish an interim fuel factor and refund cost over-recoveries. The Commission hereby issues the following Order:

1. Pursuant to P.U.C. SUBST. R. 23.23, adopted on an emergency basis on February 21, 1986, the Commission considered only the petition filed by GSU, as amended, and the staff memorandum filed April 2, 1986, reviewing that petition.

2. Based on the petition and the staff memorandum, the Commission APPROVES the interim fuel factor and refund methods proposed in the petition and the refund amount as modified to include over-recoveries occuring during February 1986 and interest on the over-recovery through March 1986.

3. The system fuel factor of 2.477 cents per kilowatthour and the refund amount of $18,756,291 are APPROVED.

4. The interim fuel factor and refund SHALL be instituted with GSU's April billing cycle as requested.

5. It is further ORDERED that discovery and opportunity for hearing on whether the over-recovery amounts, interest calculation, and refund method proposed by GSU comply with P.U.C. SUBST. R. 23.23 will occur in the fuel reconciliation phase of Docket Nos. 6477, 6525, and 6660.

The Commission further ADOPTS the following Findings of Fact and Conclusions of Law.

A. Findings of Fact

1. On February 28, 1986, GSU filed a petition to establish an interim fuel factor and refund fuel cost over-recoveries in Docket Nos. 6477,

6525, and 6660, pursuant to P.U.C. SUBST. R. 23.23 as adopted on an emergency basis on February 21, 1986.

2. GSU subsequently amended its petition to incorporate refunds of over-recoveries for the October 1985 through February 1986 period and to include interest on the overrecoveries through March 1986, producing a total refund amount of $18,756,291.

3. GSU's proposed system interim fuel factor is 2.477 cents per kilowatthour.

4. The proposed interim fuel factor is based on actual costs incurred in January 1986.

5. A review of January 1986 cost and performance data indicates that the data from that period provides a practical and representative estimate of GSU's fuel costs until Docket No's. 6477, 6525, and 6660 are completed. This finding is expressly made subject to discovery and hearing in the fuel reconciliation portion of Docket No's. 6477, 6525, and 6660.

6. Based on Findings of Fact No's. 4 and 5, a system interim fuel factor of 2.477 cents per kilowatthour is reasonable. This finding is expressly made subject to discovery and hearing in the fuel reconciliation portion of Docket No's. 6477, 6525, and 6660.

7. The over-recovery amounts, interest calculations and refund method proposed by GSU are accurate and in compliance with P.U.C. SUBST. R. 23.23(b)(2)(F), (G), and (H). This finding is expressly made subject to discovery and hearing in the fuel reconciliation portion of Docket No's. 6477, 6525, and 6660.

8. In order to timely pass to the consumers of GSU the benefits of reduced fuel prices, it is appropriate to institute the interim fuel factor contained in Finding of Fact No. 6 and the total over-recovery amount and interest contained in Finding of Fact No. 2, using GSU's proposed refund methodology, in the April billing cycle.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Sections 16(a) and 43(g) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986), and P.U.C. SUBST. R. 23.23.

[1] 2. P.U.C. SUBST. R. 23.23 provides for expedited review of fuel cost over-recoveries and fuel factor reductions so that the utility's customers can receive the benefits of reduced fuel costs as rapidly as possible. Therefore, the rule contemplates reductions of fuel factors and refunds of over-recoveries without hearing, based on the utility's filing, staff review, and Commission order; provided that discovery and hearing will be allowed at the time of fuel reconciliation.

3. Based on Findings of Fact No's. 5, 6, and 7, GSU's petition to establish an interim fuel factor and refund fuel cost over-recoveries filed on February 28, 1986, as amended to include over-recoveries for the October 1985 through February 1986 period and to include interest on the over-recoveries through March 1986 is in compliance with P.U.C. SUBST. R. 23.23. This conclusion is expressly made subject to discovery and hearing in the fuel reconciliation portion of Docket No's. 6477, 6525, and 6660.

4. Based on Finding of Fact No. 8 and Conclusion of Law No. 2, the interim fuel factor, over-recovery amount and interest shall be reflected in the April billing cycle, using the methodology proposed by GSU.

SIGNED AT AUSTIN, TEXAS on this the 4th day of April 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

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INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL. APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDINGS OF THE CITY OF ORANGE, ET AL. APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDINGS OF THE CITY OF LUMBERTON	DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

June 25, 1986

Proposal for Decision adopted with modifications, and stipulation resolving most of the issues in the case adopted.

[1] PROCEDURE - MISCELLANEOUS

The expertise of staff experts who have not otherwise participated in a case for the purposes described in Sections 14(q) and 17 of the Administrative Procedure and Texas Register Act may be utilized to calculate the numerical impact of the examiner's recommendations on utilities and customer classes.

[2] RATEMAKING - COST OF SERVICE - FUEL AND PURCHASED POWER - RECONCILIATION

The Commission adopted the parties' stipulation allowing the utility to defer reconciliation of fuel costs incurred between the commercial operation date of a nuclear power plant and the date of the final order in the case in which the costs of the plant are considered for inclusion in rate base as plant in service.

[3] RATEMAKING - RATE BASE - NUCLEAR FACILITIES - COMMERCIAL OPERATION

The Commission adopted the parties' stipulation requiring a utility to defer costs capitalized during construction of a nuclear power plant, including buybacks of capacity from a co-owner and fuel savings, from the date the nuclear plant is commercially in service as defined by the Commission until the effective date of the rates approved in the case in which the Commission considers inclusion of the nuclear plant costs in rate base as plant in service.

CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

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CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

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PROPOSAL FOR DECISION CONCERNING PARTIES' STIPULATION OF MAJORITY OF ISSUES IN CASE

In this Proposal for Decision Concerning Parties' Stipulation of Majority of Issues in Case (Proposal for Decision), the examiner recommends approval of an agreement of the parties (the Stipulation) which, if adopted, would resolve nearly all issues in the case. The issues still in dispute, relating to the Southern Companies purchased power contracts and fuel reconciliation, are extremely important. The taking of evidence concerning these two unstipulated issues will resume on June 30, 1986.

The discussion consists of three main parts: Procedural History, Summary of the Stipulation Provisions and Supporting Testimony and Examiner's Recommendations. The procedural history of the case so far has been included in this Proposal for Decision, for two reasons. One is that, if adopted, the Stipulation would resolve most issues in the case, while the Examiner's Report would address only two. The other is that evidence filed to support the Stipulation suggests that the events which have occurred in this docket have significantly influenced the terms of, and constitute part of the reason for approving, the Stipulation. The entire Stipulation is attached as Appendix A to this Proposal for Decision. The Stipulation also is summarized in connection with the testimony supporting each provision.

I. Procedural History

From both a substantive and a procedural point of view, this case has been extraordinarily complex. The procedural history may be characterized as a tangled skein of threads representing more or less concurrent timelines on which numerous unrelated procedural disputes were argued and resolved. Because of this, this procedural history has been organized to some extent by subject matter, rather than simply being a chronological listing of events. Also, parts

of it are presented in tabular form in appendices to the Proposal for Decision. No effort has been made to describe every motion, appeal or order. Persons interested in a more detailed discussion of the procedural disputes should review the Commission's and examiner's orders previously issued in these cases. A chronological list of examiner's orders and Commission action concerning any appeals from such orders, organized by docket number, is attached as Appendix B.

A. Docket No. 6477 and Fuel Factor Reductions and Refunds

Docket No. 6477 arose out of a previous inquiry by the Commission's general counsel which had sought a reduction of the fuel factor of, and refund of fuel cost overrecoveries by, Gulf States Utilities Company (GSU). That inquiry, Docket No. 6376, was essentially resolved by agreement of the parties. Pursuant to the agreement, GSU's fixed fuel factor was reduced, and a refund of $20,566,386 of overrecovered fuel costs and interest for the period of February 1984 through July 1985, was required. The Commission approved the agreement in a final Order signed on August 29, 1985. That Order provides in part:

> 4. Issues relating to whether or not the fuel factor established in this docket needs to be further reduced are severed from this docket. A new docket shall be established for the purpose of evaluating this question.

The new docket established pursuant to the final Order in Docket No. 6376 was Docket No. 6477.

In an examiner's order dated September 17, 1985, a prehearing conference in Docket No. 6477 was scheduled for October 7, 1985. On October 1, 1985, GSU filed its rate case, which was assigned Docket No. 6525. Examiner's Order No. 1, dated October 2, 1985, put the parties on notice that consolidation of Docket Nos. 6477 and 6525 would be considered at the October 7, 1985 prehearing conference. On October 2, 1985, the Cities of Port Arthur, Groves, Port Neches and Nederland filed a motion to dismiss Docket No. 6477 for want of jurisdiction, arguing that municipalities have exclusive original jurisdiction over electric utility rates within their city limits. This motion to dismiss was denied in examiner's Order No. 3, dated October 16, 1985. In the same Order, Docket Nos. 6477 and 6525 were consolidated.

On October 16, 1985, GSU filed a motion for a second reduction in its fuel factor and refund of fuel cost overrecoveries. After other matters were attended to, the October 21, 1985, first prehearing conference in the rate case was recessed until October 29, 1985, to allow the parties to negotiate concerning GSU's motion. When the prehearing conference reconvened, the parties announced that they had reached agreement on all issues but one. The disputed issue concerned whether the Commission lawfully could order that proceeds from refund checks for customers who cannot be located must be distributed to GSU's

program for helping indigent customers pay their utility bills, the result most parties favored, or whether alternatively the issue is controlled by the State of Texas' Unclaimed Property Law. The parties agreed that this issue should be briefed, but that meanwhile reduction of the fuel factor and implementation of the refunds could and should proceed.

Pursuant to examiner's Order No. 7, signed October 30, 1985, GSU's fuel factor was reduced from the systemwide fuel factor of 3.066 cents per kilowatt hour (kwh) ordered in Docket No. 6376 to 2.788 cents per kwh. In addition, a refund of fuel cost overrecoveries plus interest for the period of August 1985 through October 1985, in the amount of $11,299,554, was ordered.

After the briefs concerning the disputed issue relating to the Unclaimed Property Law were submitted, the examiner issued Order No. 21, dated January 27, 1986. In that Order, the examiner found that the Unclaimed Property Law controlled disposition of the refunds. This Order was appealed to the Commission, and by order dated February 19, 1986, the Commission, with Chairman Peggy Rosson dissenting, reversed Order No. 21. The examiner was instructed to include in the examiner's report a recommended mechanism which would allow the unclaimed refunds to be distributed to GSU's current ratepayers on a pro rata basis after a final order is entered in this case.

On February 21, 1986, the Commission amended its fuel rule, P.U.C. SUBST. R. 23.23(b)(2), establishing expedited procedures for approving fuel factor reductions and refunds of fuel cost overrecoveries.

On February 28, 1986, GSU filed a motion seeking a third reduction of its fuel factor and refund of fuel cost overrecoveries, this time utilizing the procedures and methodologies set forth in the new fuel rule. GSU sought a reduction in its systemwide fuel factor from 2.788 cents per kwh to 2.477 cents per kwh. This reduction was unopposed, and was granted by examiner's Order No. 31, dated March 19, 1986. In an April 4, 1986, order, pursuant to the procedures set forth in the new fuel rule, the Commission authorized the requested reduction in GSU's fuel factor.

The procedures and methodology for making refunds specified in the new fuel rule were contested by the State agencies which are customers of GSU (State Agencies) and by the State Treasurer which administers the Unclaimed Property Law. These parties accordingly contested the application of these procedures and methodology to the refunds sought by GSU in its February 28, 1986 motion. After hearing oral argument on the issues, the examiner concluded in Order No. 31 that the new fuel rule applied and ordered a refund of $18,756,291. This amount includes the fuel cost overrecovery amount from October 1985 through February 1986 and interest on this amount through March 1986. The examiner denied a subsequent request to stay this order. The State Agencies and State Treasurer appealed these actions to the Commission, but the Commission declined

to hear the appeals. In the April 4, 1986, order, the Commission ordered the implementation of the $18,756,291 refund. The Commission further ordered that discovery and opportunity for hearing on whether or not the overrecovery amounts, interest calculation and refund method proposed by GSU comply with the new fuel rule are to take place in the fuel reconciliation phase of the consolidated rate case. A schedule for accomplishing this was agreed to by the parties at the hearing on the merits.

B. Docket No. 6525 and Dismissal of Primary Filing

On October 1, 1985, GSU filed with the Commission a statement of intent to increase its rates within the portions of its service area over which the Commission has original rate jurisdiction (the environs case). This filing was assigned Docket No. 6525. There were two alternative parts of the request. First, GSU sought authorization to raise its rates by $89,601,486, or 10.8 percent, in the first year, and $87,790,277, or 9.55 percent, in the second year. The total increase for the two years would be $177,391,763, or 21.4 percent, over total Texas adjusted test year revenues. This part of GSU's request, known as the Primary Filing, assumed Commission treatment of GSU's nuclear power plant project, River Bend Unit 1 (River Bend), as plant in service. Alternatively, assuming that River Bend was not treated as plant in service, GSU sought authorization to increase its rates by $110,181,957, or 13.28 percent over total Texas adjusted test year revenues. This part of the request is known as the Alternate Filing. The rate requests were filed pursuant to Section 43(a) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985). The proposed rate increases would affect all customer classes and customers within the Commission's jurisdiction in this case.

On October 4, 1985, the Office of Public Utility Counsel (OPC), representing GSU's residential and small commercial customers, filed a motion to dismiss Docket No. 6525. GSU filed a response on October 15, and the motion was argued at the first prehearing conference on October 21. On November 15, 1985, the examiner issued a Proposal for Decision Concerning Office of Public Utility Counsel's Motion to Dismiss, recommending dismissal of GSU's Primary Filing, but not dismissal of the Alternate Filing. Specifically, the examiner recommended granting Count II of OPC's motion, which requested dismissal of the Primary Filing because the second tier of the proposed rate increase would take effect too far into the future, and Count IV of OPC's motion, which requested dismissal of the Primary Filing because River Bend was not in service at the end of the test year. The examiner recommended denial of Count I of OPC's motion, which requested dismissal of the entire case due to use of a stale test year, and Count III of OPC's motion, which requested dismissal of the Alternate Filing because part of the relief requested was based on projected data. The examiner

recommended that Count V of OPC's motion, which requested dismissal of the case on the grounds that GSU should not be allowed to file alternative rate cases, be regarded as moot.

In a December 2, 1985 order, the Commission adopted the Proposal for Decision Concerning Office of Public Utility Counsel's Motion to Dismiss, except for the discussion concerning Count II, and thus dismissed the Primary Filing. Subsequent references to the rate request in the present Proposal for Decision refer to the Alternate Filing, unless indicated otherwise, or unless the context shows the reference is to the case as it existed prior to December 2, 1985.

C. Parties

The parties to this case and their representatives are listed in Appendix C to the Proposal for Decision. Where an attorney is representing a large number of clients, specifically counsel for Texas Industrial Energy Consumers (TIEC), the State Agencies and those municipalities represented by the law firm of Butler and Casstevens (the Cities), a list of clients is included in Appendix D.

The only intervention disputed by a party was that of the Texas Attorney General's Office (AG). The AG alleged the following justiciable interests: the State of Texas is a customer of GSU and the AG is charged with representing the interests of the State and of the people of the State insofar as they are taxpayers and recipients of government service. The AG, Cities, and OPC supported the motion to intervene; GSU opposed it; and general counsel did not object to the AG intervening as a representative of the State Agencies as customers of GSU, but objected to the concept that the AG's justiciable interest might be broader. After reviewing the written pleadings and hearing oral argument, in Order No. 4, signed October 24, 1985, the examiner granted the motion to intervene on the limited ground that some state agencies are customers of GSU and the AG asserted that he is authorized to represent them. The AG's clients are referred to as the State Agencies in this Proposal for Decision.

The entities listed in Appendix C became parties in one or more of the following ways: intervention in Docket No. 6376, from which Docket No. 6477 was later severed; intervention in one or more of Docket Nos. 6477, 6525, 6660, 6748 or 6842; or status as appellee in an appeal from a municipal rate ordinance which was filed in Docket Nos. 6525, 6660, 6748 or 6842. The parties which presented testimony or cross-examined at the hearing on the merits are GSU, TIEC, North Star Steel Texas, Inc. (NSST), the State Agencies, the Cities, OPC and general counsel. Representatives for a number of municipalities, such as the mayor, city councilmen or the city attorney, and representatives for consumer groups and the County of Montgomery also attended, entered appearances at or made statements at the hearing.

D. Regional Hearing and Protest Statements

Pursuant to PURA Sections 10 and 43(c), two regional hearings were held in Docket No. 6525. The first occurred at the Beaumont Civic Center on November 7, 1985, and lasted for approximately eight hours. The second occurred in the Conroe City Council Chambers on November 8, 1985, and lasted for approximately four hours. Chairman Rosson, Commissioners Dennis Thomas and Jo Campbell and Administrative Law Judge Elizabeth Drews were present at both hearings. Approximately fifty-five customers spoke at the Beaumont hearing and approximately twenty spoke at the Conroe hearing. Also, a number of State and local government officials spoke at the hearings. In addition, about a dozen customers and a number of State and local government officials spoke at other proceedings conducted in this case, notably the hearing on the merits. The substance of the comments made at the regional hearings and other proceedings in this case is summarized below.

There were numerous complaints that GSU's rates are too high, are higher than the rates GSU charges in Louisiana, and are higher than the rates charged in Texas by other electric utilities. Many speakers referred to the depressed state of the local economy, and indicated that they could not afford to pay such high electric utility bills. A number said that they had made significant efforts to reduce consumption, but that their bills were still too high. Several speakers expressed their belief that the local unemployment problem had been exacerbated by employers going out of business because of high utility rates. Many protestants requested that the rates not be raised, or that they be lowered to the rates charged in Louisiana. Others requested elimination of the summer/winter differential, a rate design tool which results in higher summer rates and lower winter rates.

Several consumers expressed dissatisfaction with the attitude of GSU employees they had had dealings with, or distrust in the reliability of the information GSU provides them. Some customers in Beaumont stated that they had experienced difficulties with the accuracy of their meters. Customers in Conroe referred to voltage variation problems they had experienced. A few customers spoke in support of GSU. A number of customers expressed dissatisfaction with State laws or Commission policies or rules concerning rates or customer service issues such as deposits and fuel cost recovery and refunds. Others offered suggestions concerning energy-efficiency programs, such as offering interest-free loans or having a regional focus.

E. Scheduling and Effective Date

In examiner's Order No. 1 dated October 2, 1985, GSU's proposed rate increase was suspended for 150 days beyond the otherwise effective date of November 5, 1985, until April 4, 1986, pursuant to PURA Section 43(d).

At the first prehearing conference in Docket No. 6525, held on October 21, 1985, GSU agreed on the record to extend the effective date by 45 days, until December 20, 1985, to enable the staff to complete its study of River Bend. In Order No. 4, signed October 24, 1985, the effective date was resuspended for 150 days until May 19, 1986. The hearing was scheduled to begin February 24, 1986, with a final prehearing conference to convene on February 21, 1986.

On October 18, 1985, general counsel filed a motion to require GSU to correct certain deficiencies in its rate filing package, and for other relief pertaining to this problem. On October 24, 1985, GSU filed its response. On October 25, 1985, general counsel filed a reply. In Order No. 5, signed October 28, 1985, the examiner granted in part and denied in part general counsel's motion. The examiner found several deficiencies in the rate filing package, but concluded that they were insufficiently material to warrant dismissal or, in light of GSU's earlier 45-day extension of its effective date, suspension of the effective date at that point. Pursuant to P.U.C. PROC. R. 21.65(b), GSU was ordered to correct the deficiencies within ten days. In Order No. 9, signed November 19, 1985, the examiner found that GSU had met this deadline.

In January 1986, in response to certain discovery disputes (see Part I.F. of the Proposal for Decision), several parties filed motions for continuance, dismissal or sanctions. The parties eventually agreed to a three week continuance of the hearing and extension of the effective date, and to extensions of various prefiling and other dates. In accordance with GSU's agreement on the record at the February 4, 1986, prehearing conference, the effective date was extended until January 10, 1986, and in Order No. 25 signed February 7, 1986, it was resuspended for 150 days until June 9, 1986. The final prehearing conference was continued until March 14, 1986, and the hearing was continued until March 17, 1986.

The hearing on the merits began on March 17, 1986. Evidence was taken for seven weeks, then the hearing was recessed for settlement talks, reconvening from time to time for presentation of status reports. Under PURA Section 43(d), the 150 day period during which the effective date of a proposed rate increase has been suspended is automatically extended two days for each day of hearing in excess of fifteen days. The parties agreed that working days which occurred between the recess of the hearing for purposes of negotiations and the signing of a Commission order accepting or rejecting the settlement will operate to extend the suspension period in the manner described for hearing days in PURA Section 43(d). The hearing days necessary to finish trying the disputed issues will similarly extend the suspension period. As of the time this Proposal for Decision was written, the rate increase suspension has been extended into September 1986.

F. Prehearing Conferences, Discovery Disputes and Confidentiality

The first and the final prehearing conferences in this case mainly addressed scheduling and other matters not related to discovery. Six other prehearing conferences were held, primarily to address pending discovery disputes. These prehearing conferences convened on November 25 and December 13, 1985, and January 3, January 13, January 24, and February 4, 1986. Another prehearing conference was scheduled for February 14, 1986, but was cancelled after all issues to be addressed at that prehearing conference were resolved by negotiation among the parties. Except for the confidentiality issues discussed below, discovery disputes will not be detailed in this report. There were many discovery requests and disputes, most of which were resolved by the parties before the prehearing conferences began. The examiner's orders concerning the remaining discovery disputes, except for the orders concerning confidentiality, were not appealed.

The largest single discovery dispute concerned a large number of documents which GSU was willing to provide the parties, but wished not to be disclosed to the public. GSU claimed that these documents constituted trade secrets either of GSU or of a third party with which it had contracted. In Order No. 14, signed December 16, 1985, the examiner entered a protective order allowing the parties to obtain the documents and to request disclosure of any they believed should not be protected, but not to disclose the documents to the public pending issuance of a ruling concerning any such request. On January 3, 1986, OPC requested that all of the documents be disclosed to the public. On January 8, 1986, the Commission granted the Cities' appeal of Order No. 14 and dissolved the protective order. The documents were then recollected from the parties. Later in January, after hearing oral argument and reviewing the documents in camera, in Order Nos. 18, 20 and 22 the examiner ordered disclosure of all but a few documents. A protective order was issued with respect to the remainder. When Order Nos. 18, 20 and 22 were appealed by GSU, the Commissioners also reviewed these documents in camera and upheld the examiner's orders.

Two entities, Burlington Northern Railroad Company and General Electric Company, both of which were parties to contracts with GSU, appealed the Commission's decision in court. Since before the beginning of the hearing, court orders have been in effect prohibiting disclosure to the public of the small number of documents which were the subjects of the court appeals. Because of these court orders, certain exhibits to the direct testimony of staff fuel witness Stan Kaplan were filed under seal. However, it has not been necessary to close to the public the hearing in the consolidated rate case at any time.

G. Docket Nos. 6660, 6748 and 6842 and GSU Appeals From Municipal Rate Setting Actions

Under PURA Section 17, the Commission has original jurisdiction over GSU's rate request as it relates to the parts of GSU's Texas service territory which are outside city limits or inside the city limits of a municipality which has ceded its original jurisdiction to the Commission. All other municipalities have original jurisdiction over GSU's rate request as it pertains to area within their city limits. The Commission has appellate jurisdiction over the rate setting decisions of these municipalities if an appeal from their decisions is perfected.

GSU's statement of intent recites that virtually identical statements of intent were contemporaneously filed with all regulatory authorities exercising original rate jurisdiction over GSU. Those municipalities exercising original jurisdiction whose decisions GSU later appealed took a variety of actions concerning GSU's rate request. Some denied the rate increase; others ordered a rate reduction; and others did both. The rate reductions ordered by cities varied. A summary of actions taken by municipalities ordering a rate reduction is presented in Appendix E of the Proposal for Decision. A summary of all of GSU's appeals from city ordinances and any consolidations of those appeals with the environs rate case is presented in Appendix F.

In examiner's Order No. 4, signed October 24, 1985, a procedure was established whereby municipalities and parties were notified both of any motions to consolidate appeals of city rate setting actions with the environs rate case, and of the deadline for filing objections to any proposed consolidation. With every appeal from a municipal action denying the requested rate increase, GSU filed a motion to consolidate. None of these motions to consolidate were opposed, and all were granted.

The procedures with respect to city-ordered rate reductions were more complicated. Appeals from these actions were originally filed in Docket Nos. 6660, 6748 and 6842, and presided over by Administrative Law Judge Phillip Holder. These dockets were eventually consolidated with the environs case and subsequently handled by Administrative Law Judge Drews.

The first set of appeals from municipality-ordered rate reductions was considered in Docket No. 6660. The first such appeal was filed on December 31, 1985. As was true for each rate reduction considered in Docket Nos. 6660, 6748 and 6842, GSU requested interim rates at the level it was charging elsewhere in Texas.

At the first prehearing conference in Docket No. 6660, held January 14, 1986, GSU, the appellee Cities of Port Neches and Port Arthur, OPC, the State Agencies and general counsel appeared. OPC's motion to intervene was granted.

Also, the parties agreed on a procedural timetable leading to a hearing on the interim rate requests.

The second prehearing conference in Docket No. 6660 was held on January 28, 1986. The same parties appeared, along with the City of Groves. GSU had also filed an appeal from the City of Groves' rate reduction order. The State Agencies' motion to intervene was granted. In addition, the parties reached a stipulated settlement of the interim rate requests, which was approved by an examiner's order dated February 3, 1986. Under the stipulation, beginning February 3, 1986, GSU would charge interim rates at the level of the rates it had charged prior to the rate reduction ordinance. If the interim rates turned out to be higher than the rates approved in the Commission's final order in Docket No. 6660, GSU would implement a refund of the difference retroactive to February 3, 1986. GSU also agreed to a 45-day extension of its effective date in those cities, as it had in the environs case.

Pursuant to equivalent stipulations by the parties and three new appellee cities, interim rates were established in the Cities of Vidor, Bridge City and Nederland in an examiner's order signed March 7, 1986.

In examiners' Order No. 29, also signed March 7, 1986, Docket No. 6660 was consolidated with Docket Nos. 6477 and 6525. The parties did not object to this consolidation. However, the appellee cities expressed concern as to whether under PURA Section 26(e)(2), GSU's appeals from city-ordered rate reductions would be deemed approved unless the Commission issued a final order within 185 days after the filing of GSU's appeals. In Order No. 29, the examiners found that under PURA Section 26(e)(1), the Commission would not lose jurisdiction over Docket No. 6660 so long as it issued a final order by no later than the date it issued a final order in the environs case. Because of concern over this expiration of time issue, however, the appellee cities asked the examiners to reconsider Order No. 29. This request was denied in Order No. 30. The appellee cities then appealed Order Nos. 29 and 30 to the Commission. The results of this appeal are described in Section I.H. of the Proposal for Decision.

GSU also appealed from the rate reduction ordinances of the Cities of Orange, Pinehurst, Rose City and Beaumont. Because at the time Docket No. 6660 was consolidated with the environs case, stipulations had not been entered into by these four cities, GSU's appeals from their rate reduction ordinances were assigned Docket No. 6748. Subsequent appeals from similar actions by the Cities of Sour Lake, Rose Hill Acres, Kountze, and Silsbee also were assigned Docket No. 6748.

Pursuant to stipulations of the parties equivalent to those entered into in Docket No. 6660, interim rates were established by examiner's orders dated March 19, 1986, for the Cities of Orange, Beaumont, Rose City and Pinehurst;

April 1, 1986, for the Cities of Sour Lake and Rose Hill Acres; and April 22, 1986, for the Cities of Kountze and Silsbee.

Docket No. 6748 was consolidated with Docket Nos. 6477, 6525 and 6660 in examiners' Order No. 33, signed April 24, 1986. As in Docket No. 6660, the parties did not object to the consolidation, but the appellee cities had reservations as to the expiration of time issue discussed above. These concerns were addressed by the Commission at the time they considered the appeal of examiners' Order Nos. 29 and 30.

GSU also appealed from the rate reduction ordinance of the City of Lumberton. Because at the time Docket No. 6748 was consolidated with the environs case, a stipulation had not been entered into by this municipality, GSU's appeal from its rate reduction ordinance was assigned Docket No. 6842. Pursuant to a stipulation equivalent to those entered into in Docket Nos. 6660 and 6748, interim rates were established for the City of Lumberton by examiner's order dated May 9, 1986.

The heading of the Stipulation which is the subject of this Proposal for Decision referred to Docket No. 6842 as well as Docket Nos. 6477, 6525, 6660 and 6748. At the hearing in the four consolidated dockets on June 12, 1986, Mr. Don Butler, who indicated that he represented the City of Lumberton for this purpose, moved to consolidate Docket No. 6842 with the other four dockets. The other participants in Docket No. 6842, GSU and general counsel, and the other parties to the four consolidated dockets had no objection. Docket No. 6842 was consolidated with Docket Nos. 6477, 6525, 6660 and 6748 by examiners' Order No. 42 dated June 13, 1986.

H. Issues Concerning the Summer Differential and Order Nos. 29 and 30, and Settlement Negotiations

Several important events occurred in this case during a period beginning approximately seven and one half weeks into the hearing. First, on April 29, 1986, GSU filed a petition for an interim order authorizing GSU to adopt a method of deferred accounting and booking of income and expense associated with River Bend. The requested accounting treatment would cover the period between the commercial operation date of River Bend and the issuance of a final order in Docket No. 6525.

Second, in a letter to the other Commissioners which was sent to all parties to the case, Commissioner Thomas proposed to discuss implementation by GSU of its summer differential at the April 30, 1986, open meeting, at which appeals of examiners' Order Nos. 29 and 30 were scheduled to be heard. As discussed previously, GSU's current rates included a summer/winter differential, a rate design tool whereby GSU's rates are lower in the winter and higher in the

summer than otherwise would be the case. GSU's summer differential was scheduled to go into effect again on May 1, 1986, thereby raising the price of electricity to GSU's customers. Given the current poor economic conditions and hot, humid climate of GSU's Texas service area, the Commission expressed interest in the Commission and parties investigating whether it would be possible not to implement the summer differential on May 1.

Third, on April 30, 1986, the Commission considered the appellee cities' appeal of examiners' Order Nos. 29 and 30. The cities were anxious about the possibility that GSU's appeals from the cities' rate reduction ordinances would be approved by operation of PURA Section 26(e)(2) unless a final order were issued within 185 days after the appeals were filed. The Commission did not reverse the docket consolidations or the examiners' conclusions that under PURA Section 26(e)(1), expiration of time would not be a problem. However, the Commission was concerned by the possibility that the examiners' construction might not be the one ultimately adopted by the courts.

GSU offered to delay implementation of the summer differential to allow the parties to negotiate. The Commission agreed that this should be done. By agreement of the parties, beginning May 5, 1986, evidence was not taken at the hearing on the merits, which instead was recessed to allow settlement negotiations. There followed a period during which the parties discussed stipulation of various issues, and the Commission and examiner went back on the record from time to time to receive status reports. On May 7, 1986, the parties reported to the Commission that, with the exception of the Cities, which had not yet finalized their position, the active parties had reached a settlement of virtually all issues in the case. The stipulating parties wished to reduce their agreement to writing and to give the other parties an opportunity to decide if they wished to concur in the proposed settlement. GSU agreed to delay implementation of the summer differential until May 14, 1986, and longer if necessary to resolve the status of the stipulation. (GSU has extended this date from time to time, and the summer differential has not been implemented.) The essential terms of the settlement were read into the record when the examiner reconvened the hearing on May 7 after the open meeting.

With respect to the appellee cities' appeals of examiners' Order Nos. 29 and 30, at the May 7, 1986, open meeting, the Commission disapproved the settlements which had led to the interim rates in Docket Nos. 6660 and 6748, and held that the interim rate orders were invalid ab initio. However, the Commission stayed the effectiveness of this determination indefinitely pending resolution of the settlement talks.

As discussed on May 8, 1986, at the hearing on the merits, the examiner issued Order No. 35 on May 9, 1986, which notified all parties that settlement of most or all of the issues in the case was being considered by the parties, and which established a deadline for filing testimony in support of the proposed

stipulation. The order indicated that the hearing would reconvene on May 22, 1986, to allow any interested party which wished to express its position concerning the proposed settlement to do so. It provided that if no opposition was expressed, evidence supporting the settlement would be taken on that day, and that any party opposed to the stipulation needed to have a representative present at that time. These dates were extended pursuant to requests of the parties in Order Nos. 36 through 41. The hearing was reconvened several times in order to inform the examiner of the progress of the negotiations.

On June 12, 1986, the hearing reconvened to enable the parties to state their positions concerning the proposed settlement and, if no opposition was expressed, to take evidence in support of it. No opposition to the Stipulation was expressed, and pursuant to agreement of the parties, testimony supporting it was received in evidence without objection or cross-examination, for the limited purpose of supporting the Stipulation. The parties asked that the examiner's recommendations respecting the Stipulation be issued as soon as possible, and that the Stipulation be considered by the Commission at the June 25, 1986, open meeting. The parties indicated that two days for exceptions would be sufficient, and that replies to exceptions, if any, could be made orally at the open meeting.

The examiner considered issuing this Proposal for Decision as an Examiner's Report and proposed final order in these dockets, and recommending that the issues remaining in dispute be severed and assigned a new docket number. The examiner had in mind that the record in this case is enormous, and since only the disputed issues are likely to be appealed, an unnecessarily voluminous and unwieldy record would have to be sent to court in the event of an appeal if these issues are not severed. For reasons relating to confusion and finality for appeal purposes of the fuel refunds already made, the parties opposed this procedure. However, they agreed that the items listed on Stipulation Exhibit H constitute the only evidence admitted so far which must be sent to court in the event of an appeal and may be able to reach a similar resolution regarding the more than two dozen files of pleadings.

I. Issues Concerning the Hearing and the Examiner's Report

[1] In the weeks before the hearing on the merits in this case, there were indications in cases involving other utilities of some dissatisfaction with procedures respecting the use of Commission staff expertise in the preparation of examiner's reports, notably with respect to calculating the numerical impact of the examiners' recommendations on utilities and customer classes. In an effort to avoid such complications in these dockets, before the hearing began the examiner invited comments by the parties concerning how the matter should be handled in this case. After written filings and oral argument on the question, on March 27, 1986, examiner's Order No. 32 was issued. In that Order, the examiner proposed to utilize staff experts who had not otherwise participated in

the case for the purposes described in Sections 14(q) and 17 of the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6525-13a (Vernon Supp. 1986). Appeals of this Order expired and the Order was deemed approved pursuant to P.U.C. PROC. R. 21.106. Since the Stipulation included revenue requirement and rate design schedules, it was unnecessary for the examiner to utilize staff expert resource to prepare this Proposal for Decision.

On March 14, 1986, GSU filed a motion to sever the joint sponsorship of certain testimony by the Cities and OPC, and by OPC and the Commission staff. After written responses and oral argument by the parties, the examiner denied this motion orally at the hearing.

J. Notice

As required by P.U.C. PROC. R. 21.22(b)(1), GSU published a statement of intent in conspicuous form and place once each week for four consecutive weeks prior to the effective date of the proposed rate change, in newspapers of general circulation in the counties in Texas in which it serves. GSU provided publishers' affidavits. GSU also notified affected municipalities and its affected customers individually of the proposed change, as required by P.U.C. PROC. R. 21.22(b)(2) and (3).

On November 5, 1985, GSU filed a motion for partial waiver of the Commission's rule concerning notice and for extension of the deadline for intervention. GSU stated that through an administrative breakdown, the mailed notice to customers of its rate filing was not completed by October 31, 1985, as required by P.U.C. PROC. R. 21.22(b)(2). Notice was accomplished by special mailing during the period November 4 to November 8, 1985. GSU observed that the effective date had already been extended by 45 days, and requested a ten-day extension in the deadline for intervention to ensure that no one was harmed by the delay in mailing notice. No objections to GSU's motion or notice were filed. In Order No. 9, signed November 19, 1985, the examiner granted GSU's motion to extend the deadline for intervention. The Order states that the examiner is not empowered to waive a Commission rule, but that she believed the harm which the rule was intended to avoid had been mitigated. The examiner notes that even after the extended deadline for intervention passed, several motions to intervene were filed. None of these motions to intervene were opposed, and all were granted.

II. Jurisdiction

The Commission has jurisdiction over this application and the consolidated appeals from municipal ratesetting actions by virtue of PURA Sections 16, 17(d) and (e), 37 and 43.

III. Description of the Company

GSU was incorporated under the laws of the State of Texas in 1925. It is headquartered in Beaumont, Texas.

GSU is an investor-owned electric utility engaged principally in generating electric energy and transmitting, distributing and retailing such energy. It provides electric utility service in a 28,000 square mile area in Southeastern Texas and South Central Louisiana which extends a distance of over 350 miles, from a point east of Baton Rouge, Louisiana, to about 50 miles east of Austin, Texas. GSU's service area includes the northern suburbs of Houston and such large cities as Conroe, Huntsville, Port Arthur, Orange and Beaumont, Texas, and Lake Charles and Baton Rouge, Louisiana. GSU also sells electricity to municipalities and rural electric cooperatives in both Texas and Louisiana. GSU provides electric utility service to more than 500,000 customers. During the test year, which ended March 31, 1985, GSU served approximately 275,260 Texas retail customers. During the test year, 51 percent of GSU's electric operating revenues was derived from within Louisiana, and 49 percent from within Texas.

GSU's only proposed generating unit actively under construction is River Bend Unit 1, a 940 megawatt (mw) boiling water nuclear unit being constructed near St. Francisville, Louisiana. GSU currently expects River Bend to be placed in service in June 1986. GSU has an installed capacity of 6692 mw, including its 70 percent ownership of River Bend. Of this total, 5429 mw is gas-fired, 605 mw is western coal-fired and 658 mw represents GSU's share of River Bend. During the recent past, approximately 60 percent of GSU's system generation was provided by its gas-fired units, 15 percent by its western coal-fired units and 25 percent primarily by purchased power.

GSU's transmission system consists of a backbone 500 kilovolt (kv) system across South Louisiana into East Texas, with an underlying network of 230 and 138 kv lines. There is also a 345 kv system in the westernmost portion of GSU's service area. GSU is a member of the Southwest Power Pool.

In addition to its electric utility business, GSU produces and sells steam for industrial use, and it purchases and retails natural gas in the Baton Rouge, Louisiana, area. During the test year, 92 percent of GSU's operating revenue was derived from the electric utility business, 5 percent from the steam business and 3 percent from the gas business. The gas and steam products businesses are conducted entirely in Louisiana.

GSU has three wholly-owned subsidiaries: Prudential, Varibus and Finance. Prudential is engaged primarily in exploration, development and operation of oil and gas properties. Varibus operates intrastate gas pipelines in Louisiana primarily to serve GSU's generating stations. Varibus also holds lignite deposits in East Texas for possible use by GSU or sale to others. Finance is

incorporated under the laws of the Netherlands Antilles for the purpose of borrowing funds outside the United States and the lending of such funds to GSU and its subsidiaries. GSU is not a holding company or a member of a holding company system subject to the Public Utility Holding Company Act of 1935.

IV. Summary of the Stipulation Provisions and Supporting Testimony

This section contains a summary of the more important provisions of the Stipulation and of the testimony supporting each provision. Testimony and exhibits specifically prepared in support of the Stipulation were filed by GSU witness William J. Jefferson, NSST witness Samuel C. Hadaway, OPC witness Aarne Hartikka and staff witnesses Doug Divine, Stan M. Kaplan and Michael Still. This testimony was admitted into evidence at the hearing on June 12, 1986 for the limited purpose of supporting the Stipulation. It is discussed in some detail in this section. All other prefiled direct and rebuttal testimony and exhibits not previously in evidence were admitted for the same limited purpose on June 12, 1986. Due to time constraints, this testimony will not be summarized except where necessary to provide a context with which to discuss the Stipulation.

A. Article II: The Rate Decrease

Under Article II of the Stipulation, GSU's Texas retail revenues would decrease by $194,357,490, of which $80,000,000 is a reduction to base rates and $114,357,490 is fuel related. The $80,000,000 would be divided among the rate classes as follows: residential - $61,300,000; small general service - $376,000; general service - $6,435,000; large general service - $872,000; large power service - $2,856,000; large industrial service - $7,992,000; and street lighting - $169,000. The stipulated Texas retail revenue requirement is $612,143,131. This includes return of $109,778,794, which represents a 12.48 percent rate of return on Texas retail invested capital of $879,637,776. The invested capital figure includes $125,921,483 of construction work in progress (CWIP). Inclusion of this CWIP would not affect parties' rights to argue in subsequent rate cases that these amounts should be excluded from rate base.

The Stipulation also specifies that the following items are included in the Texas retail revenue requirement figure. The first is $38,131,525 in depreciation expense, which is based on the depreciation rates established in GSU's most recent general rate case, Docket No. 5560. These rates are set forth in Stipulation Exhibit E. The second is an increase in amortization expense related to the loss on cancellation of River Bend Unit 2 in the amount of $639,029, and continuation of property insurance reserve accruals at the level established in Docket No. 5560. The additional amortization costs are amortized over the remainder of the 15 year amortization period utilized in Docket

No. 5560. The third is $230,376 for the three year writeoff of the cost of the management audit performed by Temple, Barker & Sloane. The unamortized balance of that cost is $460,753. Finally, the Stipulation states that the accumulated provision for depreciation shown on Stipulation Exhibit D in connection with calculation of Texas retail invested capital has been adjusted to remove an accumulated provision for depreciation for Big Cajun 2 Unit 3 in the amount of $3,065,619.

Mr. Jefferson testified that GSU agreed to the rate reduction because GSU's two principal concerns in this case were addressed in the Stipulation: litigation of the Southern Companies issue (Article V), and issuance of the deferred accounting order (Article VI).

Dr. Hadaway testified that a rate decrease is in the public interest for several reasons. First, the economy in GSU's service area is not healthy, due to such problems as difficulties facing the oil, natural gas and petroleum based industries and high unemployment. Second, last summer GSU's residential rates were the highest in the State of Texas. In May 1986 the Commission staff estimated that the cost per kwh for 1,000 hours usage for residential customers was:

Utility	Cost
El Paso Electric	$92.86
Gulf States Utilities	82.09
Houston Lighting and Power	80.36
West Texas Utilities	80.00
Southwestern Public Service	75.36
Southwestern Electric Power	74.50
Texas Utilities Electric	72.54
Central Power and Light	68.28
City of San Antonio	66.82
Lower Colorado River Authority	46.76

With the rate reduction, the same figure for GSU would be $68. Third, the recent management audit of GSU performed by Temple, Barker & Sloane concludes that rate increases could be counter-productive, causing customers to leave the system or reduce usage by a greater percentage than the rate increase. In support of this finding, Dr. Hadaway testified as follows. GSU's kwh sales declined by 8 percent in 1985 and are expected to decline by 6 percent in 1986. They decreased by 13 percent in the first quarter of 1986 compared to the same period in 1985. Industrial sales declined in the first quarter of 1986 by 14 percent. Residential sales declined by 8 percent. Industrial load loss is 200 mw in 1985, 45 mw in 1986 and 450 mw in 1986-1987. Total possible industrial load loss is 1,097 mw. Fourth, a rate decrease may instill customer confidence in GSU.

Mr. Hartikka testified as follows concerning the rate decrease. The Stipulation avoids implementation of the summer differential, which is important because of the depressed economic conditions in GSU's Texas service area. Also, the proposed rates approximate rates currently in effect in Louisiana. Mr. Hartikka stated that rates in the two States should be approximately equal absent cost justification for material differences.

Dr. Divine began by comparing the Stipulation with the staff recommendation as expressed in prefiled testimony. He observed that the Stipulation proposal is similar to the staff's original recommended $85,531,079 reduction in base rates and $104,244,582 reduction in revenues through the fuel factor. Dr. Divine commented that the Stipulation addresses only total dollar revenues for the most part, but that some specific comparisons can be made. First, the staff in prefiled testimony recommended a 12.58 percent rate of return on invested capital, compared to the Stipulation figure of 12.48 percent. The Stipulation reduces the CWIP in rate base level to 13.2 percent, well within the range originally recommended by the staff. Second, the Stipulation fuel factor and fuel revenues are lower than those proposed by the staff or any party. The staff used a fuel factor of 2.1744 cents per kwh, while the Stipulation would set the factor at 2.094 cents per kwh. This represents a $9 million reduction in fuel collections relative to the staff's original proposal. However, Dr. Divine pointed out that the rate impact differential could be affected by the outcome of the litigation of the Southern Companies issues. He noted that the Stipulation fuel factor includes the purchase of Southern Companies energy, while the proposal in the staff's prefiled testimony did not.

Two witnesses cited the advantage of speed which the negotiated settlement would have over litigating all of the issues. Dr. Hadaway observed that the Stipulation would avoid additional litigation of the River Bend prudence issue and other matters which will be before the Commission again in GSU's next rate case (the plant in service case), in which GSU is expected to request inclusion of River Bend in rate base as plant in service. Dr. Divine noted that a quicker resolution of the issues would benefit the ratepayers in two ways. First, the parties would avoid additional rate case expenses. Second, the new rates would be implemented sooner. Dr. Divine predicted that if the Stipulation were not adopted and the hearing on all issues resumed, a Commission final order would not be issued until November 1986, based on the number of remaining witnesses. Thus, the final order rates would go into effect in December 1986. Under the Stipulation, customers could begin paying the lower rates in June 1986. The Stipulation reduces monthly base rates by an average of $6.67 million compared to $7.5 million proposed in the staff's prefiled testimony. If GSU files its plant in service case in October 1986, the rates might go into effect in April 1987. Thus, if the Stipulation rates are implemented in June 1986, they would be in effect for almost ten months, with an accumulated savings to customers over current base rates of almost $67 million. If the staff's originally proposed rates were implemented in December, the savings to

ratepayers from then until April 1987 would be only $30 million. (The examiner doubts that a final order in a GSU filed plant in service case will be in effect as early as April 19, 1987. Even if GSU can file its plant in service case in October 1986, absent a settlement, the hearing in that case is likely to be lengthy. However, while this would affect the numbers, it would not affect the outcome of this part of Dr. Divine's analysis.)

B. Article III: Refunds to Customers in Certain Cities

Under Article III of the Stipulation, GSU would refund to its customers in sixteen cities the amount of base rates collected in each such city since a specified date which exceeded the base rate amount that would have been collected under the Stipulation. The sixteen cities are the fifteen cities whose rate reduction ordinances were the subject of GSU's appeals in Docket Nos. 6660, 6748 and 6842, as well as the City of West Orange. For the fifteen cities, the specified beginning dates for the refund period are the dates GSU and each city agreed to in their stipulations in Docket Nos. 6660, 6748 and 6842. Regarding West Orange, GSU witness William J. Jefferson testified:

> One City, the City of West Orange, adopted a Resolution regarding reduced rates instead of enacting an ordinance. Since that Resolution does not indicate any tariff filing date or any effective date, the Company has agreed, for settlement purposes only, to a date determined in essentially the same manner as the others. That method was to allow ten days, from the date an ordinance was adopted, for the tariff filing specified in the ordinance and then to assume, as some ordinances specified, that the lower rates would go into effect on the first day of the next monthly billing cycle.

The total amount to be refunded through May 31, 1986, in the sixteen cities is estimated to be $5,273,000. The cities would have the right to review the accuracy of GSU's calculations, confer with GSU personnel, and if necessary have a hearing concerning the amount of the refund. The refunds would be through a one-time bill credit based on historical usage during the refund period for each customer taking service at the time of the refund.

The State Agencies had asked GSU to estimate the unclaimed amount of the refunds which would be provided pursuant to Article III of the Stipulation. Mr. Jefferson testified that in light of the Article III refund methodology, there will be no unclaimed amounts. However, he noted that customers have left, or moved within, the GSU system during the relevant period. If this had not been true, those customers would have received refunds of approximately $337,000.

C. Article IV: Fuel

The Stipulation resolves some rate case issues pertaining to GSU's fuel costs, and defers others either until the fuel reconciliation hearing to be held

in this case, or the plant in service case which GSU is expected to file. The examiner does not consider this Article of the Stipulation to be a model of clarity, and thus has indicated what she believes the parties have stipulated to. As with the other provisions of the Stipulation, if the examiner has misunderstood the parties' intent, they should so indicate in exceptions to the Proposal for Decision. The following items pertaining to fuel are discussed in the Stipulation.

First, the parties agreed on a systemwide Texas fuel factor of 2.094 cents per kwh. This is a decrease from GSU's current fuel factor of 2.477 cents per kwh, which became effective in April 1986.

Concerning this provision, Mr. Jefferson testified that the parties agreed in principle to the other aspects of the Stipulation without knowing precisely what the fixed fuel factor would be. Instead, the parties decided that the exact amount would be determined by consultation between GSU and the staff.

Mr. Kaplan testified that he adjusted his estimated test year coal costs during the settlement negotiations. Mr. Kaplan now expects these costs to be lower than indicated in his prefiled testimony. His revised estimates are $1.85 per million British Thermal Units (MMBtu) for Nelson 6 and $1.84 per MMBtu for Big Cajun 2 Unit 3 during the period June 1986 through May 1987.

Mr. Still testified that the Stipulation fuel factor is lower than that proposed in prefiled testimony by any party or the staff, primarily because natural gas prices have fallen more than had been expected in February. GSU has negotiated a lower price on four of its long-term gas contracts. Another gas supplier reduced its price by lowering its average gas costs. Spot gas prices also have declined, and are expected to continue to decrease.

According to Mr. Still, the Stipulation fuel factor utilizes Mr. Kaplan's recommended unit coal costs, and unit gas prices that represent a compromise among the parties. Mr. Still considers the unit gas prices reflected in the proposed fuel factor to be acceptable for settlement purposes. Mr. Still stated that the Stipulation also uses figures for total generation and companywide and Texas retail kwh sales proposed by GSU, rather than those of the staff. However, he testified that the differences are so slight that this will have little effect on total costs borne by Texas ratepayers.

Second, the parties agreed that reconcilable fuel and fuel related components of purchased power expenses for the Texas retail jurisdictional adjusted test year total $238,960,394. The Stipulation provides that, with one exception, the components of reconcilable fuel costs are those approved by the Commission in Docket No. 5820, which was Step II of GSU's last general rate case. The exception is that increased energy costs as a result of the final order in Docket No. 5798, the Sabine River Authority rate case, are also deemed to be reconcilable.

[2] Third, the stipulated treatment of fuel costs incurred by GSU after River Bend becomes commercially operable was described in some detail. The parties agreed that reconciliation of fuel costs incurred between the commercial operation date of River Bend and the date of the final order in the plant in service case would be deferred. The appropriate treatment of savings due to the use of nuclear fuel would be determined in the plant in service case. However, the parties stipulated to the methodology by which the amount of nuclear fuel savings would be calculated. Replacement power costs would be calculated using the same methodology as that used for River Bend test energy. That methodology is as follows. The fair value of nuclear energy would be determined using the displaced cost method. This method compares the energy cost based on actual system conditions to the energy cost assuming no generation from River Bend was available. This displaced cost would be determined on an hourly basis. The energy cost based on actual conditions would be the same estimates GSU system operators use when dispatching the system. The displaced cost would substitute other sources of energy for River Bend generation. Alternate sources of energy would lead to redispatching and possibly recommitting the system. The cost of available purchased power would also be considered if it meets GSU's normal operating guidelines. These guidelines currently state that purchased power costs must be at least one mill per kwh cheaper than GSU's generation costs before the purchase can be made. The displaced cost calculation would reflect GSU's normal operating guidelines and would be modified if those guidelines change.

Mr. Jefferson observed that the Stipulation provides only that the above method will be used to determine the amount of nuclear fuel savings. The appropriate treatment of those savings would be determined in the plant in service case. He also pointed out that since the Stipulation reconcilable fuel costs are based on the final orders in Docket Nos. 5820 and 5798, they include energy costs associated with power purchased from the Southern Companies, and reflect the deferral of nuclear fuel savings.

Dr. Hadaway testified that nuclear fuel savings should be deferred as provided in the Stipulation, reasoning as follows. Unlike contracts for fossil fuels negotiated for various generating plants in the day-to-day fuel markets, nuclear fuel is essentially a capital resource tied directly to GSU's capital investment in River Bend itself. The relatively low cost of nuclear fuel is intended to balance the huge capital and other costs unique to nuclear generation. Deferral of River Bend fuel savings and the availability of such savings until the plant in service case appropriately matches the deferral of all other River Bend costs.

Mr. Still's testimony on the issue of deferral of nuclear fuel cost savings was similar to that of Dr. Hadaway. He also observed that the stipulated treatment would enable the ratepayers who pay the deferred costs associated with nuclear power to reap the associated benefits. Mr. Still testified that under

the Stipulation, nuclear fuel generation, both for self-generated energy and for River Bend energy purchased by GSU from CEPCO, has been priced at incremental spot gas costs. The reasonableness of the nuclear fuel costs will be determined in the plant in service case. Nuclear fuel savings deemed reasonable could be refunded to ratepayers at the end of the plant in service case, or capitalized with the deferred costs.

Third, the Stipulation provides that the September 1985, November 1985 and April 1986 fuel refunds are interim in nature. (Although the testimony does not refer to this provision, the examiner has assumed that it is intended to alleviate concerns of the State Agencies and State Treasurer as to preservation of their right to appeal in court the methodology and procedures used to make those refunds. Article IX is similar.)

Fourth, the Stipulation provides that pursuant to P.U.C. SUBST. R. 23.23(b)(2), all overrecoveries or underrecoveries of fuel costs for the period February 1984 through February 1986 would be reconciled in the fuel reconciliation part of the hearing in this case. The examiner notes that, as discussed in Section I.A. of the Proposal for Decision, the Commission in interim orders in this case directed that two fuel cost overrecovery refund issues be addressed in the examiner's report. These issues are the mechanism to allow unclaimed refunds from the October 1985 refund to be distributed to GSU's ratepayers pro rata, and the question of whether or not the overrecovery amounts, interest calculation and refunds proposed by GSU in connection with the April 1986 refund comply with the new fuel rule. The examiner has assumed that the parties contemplate that evidence concerning these issues will be presented during the fuel reconciliation portion of the hearing in this case.

Fifth, the Stipulation states that it does not preclude any party or the staff from filing a petition to remedy any future underrecovery or overrecovery of GSU's fuel costs.

Finally, GSU agreed to evaluate carefully whether it should take additional steps to stay closely informed concerning CEPCO's administration of coal supply, coal transportation and the coal inventory for Big Cajun 2 Unit 3, and if so, to take such steps. GSU would file testimony addressing its efforts in this regard in its next rate case. GSU would carefully evaluate whether or not it should become a party to CEPCO's litigation concerning the design and construction of Big Cajun Units 1 and 2.

D. Articles V and XV(D): Southern Companies Contracts

Under the Stipulation, the hearing would be reconvened to continue taking evidence regarding certain disputed issues relating to the contracts under which GSU purchases power from the Southern Companies. The prudence of these contracts has been challenged by the intervenors and staff. Specifically, the

hearing would address whether or not the capacity and energy costs which GSU will incur pursuant to the contracts, excluding certain facilities charges under Article IV of the Transmission Facilities Agreement, should be allowed in GSU's revenue requirement. The issues to be decided would include the Commission's jurisdiction and authority to determine the prudence of the contracts, including but not limited to issues raised in one of GSU's motions to strike. The parties agreed that facilities charges related to the contracts are included in the stipulated rates. They stipulated to the evidentiary record, other than cross-examination and associated exhibits, to be used to resolve the disputed issues. To the extent that the Commission decides that capacity and energy costs arising under the contracts should be included in GSU's revenue requirement, the final order in this case would increase GSU's revenue requirement and base rates above the stipulated amounts in an amount sufficient to cover the allowed capacity costs. Such an increase, if any, would be effective from and after the date of the final order. If the Commission finds that it has jurisdiction over the Southern Companies prudence issues, and that the capacity and energy costs should not be allowed in GSU's revenue requirement, the final order would not change GSU's revenue requirement, base rates or fixed fuel factor. To the extent that the Commission's final order, or court order on appeal of the Commission's decision, results in an increase in GSU's base rates, the increase would be divided among the rate classes in the same proportions as those stipulated to for each class' rate decrease.

Article XV(D) of the Stipulation provides that nothing in the Stipulation is intended to impair or shall impair any rights or remedies reserved by GSU under the Southern Companies contracts, or any rights concerning such contracts or these proceedings which GSU has pursuant to contractual provisions or provisions of law, or GSU's procedural rights to pursue such substantive rights.

Mr. Jefferson testified that preservation of the right to litigate the Southern Companies issue was an essential term of the Stipulation for GSU.

Dr. Hadaway testified that it is in the public interest to litigate the issue. He noted that the Commission in Docket No. 5560 directed that the staff and other parties address the issue in GSU's next general rate case, which is the present case. Dr. Hadaway testified that the Southern Companies contracts involve vast sums of money, over $2 billion in payments by GSU to the Southern Companies during the period 1986 through May 1992. The capacity payments, which are take or pay in nature, are approximately $1.2 billion. Dr. Hadaway stated that GSU has told the Southern Companies that it does not need the capacity and has asked the Southern Companies to eliminate or suspend the capacity payments. He commented that GSU, NSST and the staff have expended considerable effort and expense in providing testimony on the issue. Dr. Hadaway distinguished the Southern Companies issue from the River Bend issue because ultimate resolution of River Bend issues will require additional facts, such as information about events occurring since GSU's testimony was filed or which may occur in the next

several months. He indicated that all of the facts are available respecting the Southern Companies issues, and the record can be efficiently completed at this time.

Concerning the contracts, Mr. Hartikka testified that the intervenors' and staff's objectives during settlement negotiations were to nullify the rate impact of the purchases and at the same time leave GSU in the strongest possible position in its negotiations with the Southern Companies, or in court should litigation with them ensue. This meant that the stipulated revenue level should include no recovery of purchased power costs from the Southern Companies, and GSU could agree to nothing that might be construed by the Southern Companies or a court as agreement to a rescission of its contractual obligations. Mr. Hartikka concluded that the Stipulation provides a reasonable resolution of this problem at the present time.

E. Article VI: Deferral of River Bend Costs

A brief background might be useful in discussing Article VI of the Stipulation.

In prefiled testimony and cross-examination, the intervenors and staff have vigorously questioned the prudence of costs associated with River Bend, including a contractual buyback arrangement under which GSU would purchase substantial portions of CEPCO's power from River Bend during its first three years of operation. As noted in Section I.H. of the Proposal for Decision, GSU requested an interim accounting order permitting it to defer certain costs relating to River Bend. The Stipulation also refers to contra-allowance for funds used during construction (contra-AFUDC) which is a mechanism utilized by GSU to ensure that the Texas and Louisiana ratepayers each receive credit for the proper amounts of CWIP and AFUDC on construction projects later used to serve the needs of customers in both States. (A more detailed explanation of contra-AFUDC is contained in Schedule C-7 of GSU's rate filing package.) Article VI of the Stipulation would address these and other issues with specific language to be included in the Commission's order.

[3] Basically, under Article VI, GSU would be ordered to defer those costs which have been capitalized with respect to River Bend during its construction, as well as the buybacks of capacity from CEPCO, including fuel savings related thereto. This part of the order would be effective when River Bend is commercially in service as defined by the Commission. The order would require that the amount to be deferred with respect to the capacity and operating costs, but not the fuel costs, of the CEPCO buyback payment for the first twelve months the payments are made on a Texas retail basis not exceed the amounts actually paid to CEPCO during the period, or $106,557,000, whichever is smaller. The deferrals would also include the decommissioning costs, depreciation expense and

amortization of contra-AFUDC which otherwise would be recorded on the unit and full income tax normalization to reflect these items properly. The deferral of the costs and accrual of carrying costs thereon would continue until the effective date of the rates approved in the plant in service case. The carrying costs would be accrued at GSU's overall net AFUDC rate calculated in accordance with prescribed federal regulatory guidelines.

Under the Stipulation, the recovery of all deferred costs would be included in the plant in service case. However, the Commission would reserve the right to exclude from rate recovery any portion of the expenditures for the plant, AFUDC, capitalized expenses, capitalized depreciation, capitalized carrying costs or other capitalized costs which it determined to be related to plant that is not used and useful or to have been imprudently spent or incurred. The Commission also would reserve the right to exclude from rate recovery any portion of the deferred capacity payments resulting from the CEPCO buyback which are determined to be unreasonable or unnecessary. The Commission would reserve the right to consider if such deferred capacity payments can and should be reduced pro rata for recovery purposes to the same extent as the Commission excludes from rate recovery other items. The Stipulation would not preclude any party from raising any argument concerning the inclusion or exclusion of CEPCO buyback expenses from the cost of service. The parties could raise and the Commission could consider the reasonableness, prudence and appropriate regulatory treatment of any deferred expenses in the plant in service case.

Mr. Jefferson stated that these provisions also were an essential part of the Stipulation for GSU. His testimony contains the following statements in support of the proposed treatment.

First, GSU presently anticipates that River Bend will be in service in June 1986. At that time, the Federal Energy Regulatory Commission (FERC) Uniform System of Accounts will require that AFUDC no longer be accrued. In addition, GSU will incur over $100 million quarterly in expenses associated with the commencement of River Bend operation. Upon commercial operation of River Bend, GSU also must begin to record substantial amounts of depreciation expenses. According to Mr. Jefferson, if the Commission does not offset the loss of AFUDC and defer the increase in expenses, GSU's financial integrity may be destroyed. GSU's earnings will be reduced approximately $16 million or 16 cents per share per month simply on the basis of the Texas retail portion of these factors. In addition, Mr. Jefferson stated that failure to obtain an accounting order would jeopardize GSU's access to the capital markets. GSU estimates its 1986 cash requirements at $456 million, most of which must be provided through sale of securities. Mr. Jefferson testified that if GSU cannot maintain at least minimal financial integrity, it would not be able to finance under reasonable terms, or possibly at all. He said that recent, serious developments have had a substantial impact on GSU's financial condition and performance. Since May 29, 1986, all three major bond rating services--Moody's,

Standard & Poor's, and Duff & Phelps--have downrated GSU's bonds below investment grade. On May 12, 1986, GSU's Board of Directors reduced the quarterly common stock dividend from 41 cents to 26 cents. On June 9, 1986, the price of GSU's common stock reached a 52 week low of $7 5/8 a share compared to a high and low of $13 7/8 and $11 5/8 for the month of September 1985, the month before the filing of the Texas rate case. Mr. Jefferson indicated that GSU continues to face significant external financing requirements which would increase as a result of the rate reduction.

Second, GSU also believes that certain regulatory assurances are necessary in order to defer the described costs in accordance with paragraph 9 of Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation." SFAS No. 71 conditions the implementation of the proposed accounting treatment upon the approval of the regulatory commissions having jurisdiction over rates. SFAS No. 71 also requires an indication that the ratemaking implications of the accounting procedures will be considered by the Commission in the ultimate resolution of GSU's rate order in this case. In GSU's opinion, the accounting order provided for in the Stipulation should meet those requirements.

Third, Mr. Jefferson testified that the Commission in Application of El Paso Electric Company for Authority to Change Rates, Docket No. 6350 (February 3, 1986) allowed the same kind of remedy that GSU seeks here.

Dr. Hadaway testified that it is in the public interest for GSU to receive approval of the accounting changes contained in the Stipulation. Not to do so, he indicated, would be harmful to GSU's financial well being. For example, according to Dr. Hadaway, GSU would show negative income to retained earnings; its return on equity would be negative; and its AFUDC to income ratio would be -809.8 percent. Dr. Hadaway stated that the accounting orders would not affect rates resulting from this case, and the deferred costs can be adequately scrutinized in GSU's next rate case. He agreed with Mr. Jefferson that the proposed accounting treatment is the same as that granted regarding El Paso Electric Company's Palo Verde Nuclear Generating Station in Docket No. 6350.

Mr. Hartikka testified that the Stipulation affords ratepayers ample opportunity to avoid the adverse consequences that would otherwise result from the existing contractual undertakings between GSU and CEPCO. Mr. Hartikka concluded that since the prudence and efficiency of the buyback charges are dependent in part upon the Commission's findings regarding River Bend, it is reasonable to defer the issue until the Commission completes an investigation of River Bend costs. He also testified that GSU's exposure to disallowances creates incentives for GSU to bargain as vigorously as possible with CEPCO to try to obtain relief from the existing contractual obligations.

F. Articles VII and XI: Rate Moderation Plan and River Bend Prudence Docket

Article VII of the Stipulation provides that in the plant in service case, GSU would propose a rate moderation plan to defer the recognition in rates of part of River Bend's costs from the early to the later years of operation. Concerning this provision, Mr. Jefferson stated that the Stipulation leaves open the nature of the rate moderation plan, and that GSU is studying that matter actively. Mr. Hartikka testified that the rate moderation plan provision is important, because any attempt to apply conventional capital recovery methods to River Bend could cause serious injury to a service area already suffering from depressed economic conditions.

In Article XI, the parties agreed that testimony admitted into evidence and cross-examination concerning it in this case which addresses River Bend prudence may be offered and admitted into evidence in Docket No. 6755, the River Bend prudence docket. Testimony not admitted during the actual hearing in Docket Nos. 6477, 6525, 6660, 6748 and 6842 would be subject to cross-examination and motions to strike. Mr. Henry Card, who is the presiding examiner in Docket No. 6755, attended the June 12, 1986 hearing in the consolidated dockets and indicated that the parties in his docket are a subset of the parties in the consolidated dockets, and that this provision in the Stipulation is acceptable to him. He observed that this evidence should be reoffered in his case.

G. Articles VIII and X: Payment of Public Party Rate Case Expenses

Under Article VIII of the Stipulation, GSU would pay the reasonable expenses of a Public Parties Committee for the services of expert consultants on the subject of GSU's prudence concerning River Bend. Such services would be obtained in connection with the pending River Bend prudence inquiry docket, Docket No. 6755, and the not yet filed plant in service case. This agreement would have no precedential effect, and GSU is not admitting any legal obligation to pay these costs. Under the Stipulation, there would be a cap on GSU's obligation to pay for these expenses of 80 percent of the contract limits on compensation for GSU's consultants in this case, the firm of Pickard, Lowe and Garrick. The Public Parties Committee would consist of those public entities charged under PURA with regulatory authority or responsibility to represent specific ratepayer interests (which the examiner notes could include municipal regulatory authorities, OPC and the staff) and the State Agencies. GSU would agree to pay the cost of the expert witnesses promptly upon receipt of invoices. GSU could apply to recover such expense fully in its next rate case, and could seek an appropriate determination of the reasonableness of the amount of such expenses.

Mr. Hartikka described these provisions as being of utmost importance, since they would assure all of the adversarially aligned parties of access to the technical and legal resources needed to litigate these issues fully and fairly. Mr. Hartikka stated that absent this provision, it is likely that one or more customer classes would be seriously underrepresented in these proceedings. He testified that this provision also is equitable, inasmuch as several parties have already expended considerable resources on this complex issue and are now agreeing to forego a resolution of it for the present.

In Article X the parties stipulated that the Cities' rate case expenses, in this and other proceedings, presented to GSU and not previously objected to are reasonable and would be reimbursed by GSU within 15 days after approval of the Stipulation by the Commission. The Stipulation further provides that GSU would reimburse such expenses not yet presented to GSU within 30 days after receipt of invoices, subject to GSU's right to seek a Commission determination of the reasonableness of such expenses.

H. Articles XV(B) and XIII: Effective Date of Rate Decrease, Tariff and Rate Design

Article XV(B) of the Stipulation provides that the Stipulation is binding as a settlement only if approved by the Commission without modification, or if modified, only if such modification or inconsistent finding or conclusion is accepted within 15 days by the party or parties affected by it.

Article XIII of the Stipulation provides that the proposed tariffs which constitute Exhibit C to the Stipulation accurately reflect the agreed-to changes in GSU's tariffs. The rates set forth in the tariff are to be effective for service on and after the date the Commission issues an order approving the Stipulation without modification, or if the Commission's order modifies the Stipulation, on or after the date on which such modification is accepted by all parties adversely affected by it.

Mr. Jefferson testified as follows concerning the stipulated rate design. The rate schedules and rules and regulations attached to the Stipulation as Stipulation Exhibit C represent the appropriate rate design which would produce the agreed revenue requirement. That rate design reflects a monthly residential customer charge of $7.00. There would also be a price differential between the standard energy charge and tail block energy charge during the winter months of 2.0 cents per kwh. The monthly residential customer charge for the optional time-of-use rate would be $10.50. Mr. Jefferson stated that the parties agreed that the present terms of GSU's experimental interruptible rider to the Large Industrial Service (LIS) rate would remain in effect, except that the interruptible credit would be decreased proportionately to track any decrease in the demand charge in the standard LIS rate. In addition, GSU would offer a $5.00 per kw per month credit for a five-minute interruption notice.

According to Mr. Jefferson, the parties agreed that GSU would implement experimental incentive riders for Good ¢ents Homes, Employment and Economic Development Service, and the experimental supplemental short-term service rate. These experimental riders and the short-term service rate, however, would expire on the date of the Commission final order in GSU's next rate case, unless extended by that final order. In addition, GSU agreed that if it requests extension of these incentive rates in the next rate case, GSU would, at that time, file a cost-benefit analysis of the incentive rates.

I. Article XIV: Settlement of Pending Litigation

In Article XIV, the Stipulation provides that within 30 days after the date the Stipulation becomes binding as a settlement under Article XV(B), all parties to the appeals of the Commission's orders in Docket Nos. 5560 and 3871 would terminate all proceedings in such appeals. Within the same period, GSU would withdraw its motion for rehearing in Docket No. 6564 filed May 29, 1986.

J. Article XVIII: Cities' Audit of AFUDC Accounting Methodologies

Article XVIII indicates that pursuant to PURA Section 27(d), the intervenor cities intend to audit GSU's AFUDC accounting methodologies and present the results in the plant in service case. GSU agreed that such audit may be commenced before that case is filed, and agreed to cooperate with the cities during the audit.

K. General Provisions of the Stipulation

In addition to the items described previously, the Stipulation contains the following provisions. The parties agreed to the revenue requirement amounts for settlement purposes only (Article I). They expressed belief that the facts in the case provide sufficient legal support for the settlement (Article I). The Stipulation is intended to address only those issues expressly covered by its terms (Article IX). Every provision in the Stipulation is in consideration of every other provision (Article XV(A)). The Stipulation does not constitute an admission by any party that any contention in these proceedings is true (Article XV(C)). The Stipulation represents a compromise and is not to be regarded as precedential in nature (Article XV(E)). The settlement discussions are to be regarded as privileged (Article XV(F)). If the Commission does not approve the Stipulation without modification, the Stipulation would be considered withdrawn and a nullity and not part of the record in this case to be used for any other purpose (Article XV(F)). The Commission and administrative law judge are not bound to accept the Stipulation (Article XV)).

L. Other Matters Described in Testimony Supporting the Stipulation

Mr. Hartikka testified that OPC requested input from legislators in GSU's service area regarding the Stipulation. Copies of the letters from legislators which OPC received in response are attached to Mr. Hartikka's testimony. Mr. Hartikka testified that the letters indicate broadly-based agreement with the proposed settlement. He stated that one letter indicates reservations expressed prior to the finalization of the settlement, but that he thinks the current Stipulation may address those concerns.

Mr. Jefferson stated, in response to a request from the State Agencies, that the amount of undistributed fuel cost overrecovery refunds was $1,283,772.93 for the September 1985 fuel refund and $271,297.86 for the November 1985 fuel refund. He also testified that GSU has finished its refunds in connection with the United Gas settlement provided for in Docket No. 5108, and that there remains $15,000 in undistributed funds. The Stipulation in Docket No. 5108 left disbursement of these funds for determination by the Commission in GSU's next rate case, which is this case. GSU suggests in light of the substantial rate reduction to which GSU has agreed, that the Commission find that the refund process is complete and direct that the appropriate accounting entries be made to reflect that the undisbursed balance is part of the $80 million rate reduction. Mr. Jefferson testified that this would put an end to the matter and, since the undisbursed amount is so small, there is no possible ratepayer impact from any other treatment of the balance.

V. Examiner's Recommendations

The parties recognize that the Stipulation is not to be interpreted as precedential. The stipulated resolution of the issues might not be the precise result the examiner would have recommended absent the Stipulation. It would be surprising if it were, given the number and complexity of the issues. Nonetheless, the examiner recommends approval of the Stipulation without modification. A review of the entire record supports the conclusions both that the Stipulation is reasonable based on the evidence, and that its adoption is in the public interest. Moreover, the Stipulation is the result of protracted and no doubt painful negotiations by counsel representing a broad spectrum of interests. The examiner would also emphasize the following.

First, continued litigation of all issues almost certainly would result in the longest electric utility rate case hearing in the history of the Commission. After seven weeks of testimony, approximately only twenty out of eighty witnesses have testified. Cross-examination concerning GSU's direct case is not yet finished. For the most part the length of the hearing has resulted from thorough, as opposed to repetitive, cross-examination and from numerous procedural controversies. Given the severe economic implications of this case

for all parties, the examiner would expect the number and intensity of the conflicts to continue if the issues must be resolved by litigation. As Dr. Hadaway's testimony suggests, the Stipulation may represent a first step toward constructive cooperative, resolution of the crises now facing GSU and its customers.

Second, obviously, such prolonged litigation is extremely expensive for all parties. Settlement of the stipulated issues would greatly shorten the length of the proceedings and associated briefs not only in this case but also in any court appeals, which would be limited to the issues remaining in dispute. This factor is particularly important given the emphasis which economic difficulties have placed on the need for austerity for GSU and its customers.

Third, significantly reducing the length of Commission proceedings and scope of any judicial appeals should assist GSU and its customers in their financial planning by greatly lessening the uncertainty inherent when experts' recommendations are as disparate as they are in this case.

Fourth, as noted by Dr. Divine, rapid resolution of most of the issues in the case would give meaning to the parties' efforts by ensuring that the rates which result would be in effect for a significant period of time. The residential customers would greatly benefit from a rate decrease which is effective at the beginning of the summer when their electric usage is highest. A sizeable rate decrease at this time, combined with GSU's commitment to propose a rate moderation plan with respect to River Bend, also might help preserve GSU's declining customer base by encouraging customers who were seeking alternatives to remain on GSU's system.

Finally, the examiner is mindful that certain terms of the Stipulation are unique, even startling. However, the problems currently being faced by GSU, its ratepayers and their communities are uncommon in their severity and complexity, and may require unusual solutions. Mercifully, there are few, perhaps no other, electric utilities in Texas which face such a combination of problems of this magnitude, where rates have been so high, the financial condition of the utility so poor, the customer base so imperiled and the consumers so little able to bear the burden of additional rate increases. In the examiner's opinion, counsel for GSU, the intervenors and staff in forging the Stipulation have realistically, capably and courageously represented their clients' interests, and the examiner would commend them for their efforts.

A few provisions of the Stipulation warrant specific mention. First, both the base rate and fuel-related rate decreases which would result from the Stipulation are very large. The rate reductions clearly would benefit GSU's customers and local communities, and merit some discussion with respect to GSU.

The fuel-related rate decrease would not affect GSU's financial integrity to the extent that it directly results from a lower cost to GSU of providing service. During an extended period of favorable market conditions, GSU has been able to achieve substantially lower fuel costs. Under P.U.C. SUBST. R. 23.23(b)(2), a utility is required to petition for a fuel factor reduction and interim refunds almost immediately if it materially overrecovers its fuel costs. Even if the amount by which a utility's fuel revenues exceed fuel costs is not material, it must be returned to ratepayers with interest in the next rate case or fuel reconciliation proceeding. Since lower fuel costs are expected for GSU, reducing fuel revenues now is appropriate because, among many other benefits, it would save GSU the expenses of participating in an interim proceeding, paying interest on a fuel cost overrecovery, and administering a refund.

Even the base rate reduction would benefit GSU to some extent because it might halt or reverse the adverse effect on GSU's revenues resulting from loss of customer base. Because of the type of industry in the area, self-generation and cogeneration are realistic alternatives for GSU's industrial customers. Transferring operations in GSU's service area to a location where electricity is less expensive may also be a practical option. The record shows that GSU has lost significant load and that the prospects for future erosion of its customer base are a definite cause for concern. Such losses would be particularly damaging for GSU and its remaining ratepayers because, with River Bend coming on line, GSU is likely to have significant overcapacity for some time. The result is that the base rate reduction might have a less harmful effect on GSU's revenues than one otherwise would expect.

Second, in the examiner's opinion, Article III of the Stipulation resolves the problem, if it exists, of the Commission's losing jurisdiction over the city-ordered rate reductions before a final order could be issued in this case. GSU's commitment to make the refunds described in Article III of the Stipulation is independent of Commission jurisdiction over the rate reductions. Thus, to order the refunds the Commission needs only appellate jurisdiction over GSU's rates in those cities, and that has been secured. For every city which has ordered a rollback of GSU's rates, GSU has appealed that city's denial of GSU's rate increase request to the Commission, and that appeal has been consolidated with this case. Therefore, pursuant to PURA Section 26(e)(1), the Commission will retain its appellate jurisdiction over rates in those cities until the date upon which it must take final action in the environs case, and can order the refunds to customers in the cities pursuant to the Stipulation.

Third, the examiner is of the opinion that deferral of nuclear fuel savings in this case is appropriate. Under the Stipulation, the effect of River Bend generation would be excluded from both rate base and fuel expense. This is the same approach as that adopted by the Commission in Docket No. 6350 involving El Paso Electric Company, which like GSU had a nuclear power plant on the threshold of becoming commercially operable.

Fourth, the evidence shows that GSU needs an order allowing it to defer River Bend costs basically for the same reasons as those found by the Commission in Docket No. 6350 to justify granting such relief to El Paso Electric Company. As in that docket, recovery of such costs in rates would not occur unless and until the Commission found such costs to have been appropriately incurred.

Fifth, payment by GSU of the public parties' expenses incurred in investigating the River Bend prudence issue appears to be acceptable under the circumstances. Generally, one would expect that if a public entity's funds are insufficient for this purpose, this would be a problem to be addressed by the Legislature. It is not a matter the Commission ordinarily would be expected to order absent such a provision in a settlement. On the other hand, there is no reason why GSU cannot pay such costs for public entities other than municipal regulatory authorities, whose rate case expenses GSU is responsible for now. Certainly River Bend is an extremely significant issue, the dollar importance of which will exceed by many times the public parties' litigation expenses. Nor is there any reason to believe that the public agencies, for example, gave up some term that would have benefitted the public in order to receive a new source of funds. On the contrary, the public should benefit from an effective public party case on the River Bend issue, and its interests have been aggressively protected elsewhere in the Stipulation. Moreover, the Stipulation contains such safeguards as a specific purpose for which the funds may be used, a maximum dollar amount, and an opportunity for GSU and possibly the staff to challenge the reasonableness of the expenses.

Sixth, the examiner has no evidence with which to evaluate Article XIV concerning settlement of pending litigation. This is obviously a decision to be made by the Commission, and the examiner has not considered this provision in evaluating the Stipulation.

Finally, the Stipulation raises some intriguing legal questions (for example, when is a settlement not a binding settlement?) which the examiner has concluded are best left unexplored by her in this case. The examiner believes that the Stipulation is in the public interest, and recommends its adoption.

As discussed in Section IV.L. of the Proposal for Decision, GSU requested that the Commission's order concerning the Stipulation address the appropriate disposition of the $15,000 in undistributed United Gas settlement refunds. No party expressed opposition to GSU's proposal. However, the examiner is not certain they were aware GSU had raised it, and since it was not addressed in the Stipulation, the examiner would prefer that GSU be permitted to raise the issue when the hearing reconvenes so that the parties' positions concerning it can be clarified.

VI. 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. Gulf States Utilities Company (GSU) is an investor-owned utility providing retail electric service in Texas pursuant to Certificate of Convenience and Necessity No. 30076.

2. The August 29, 1985, final order in Public Utility Commission of Texas (Commission) Docket No. 6376 established a new docket, Docket No. 6477, in which reduction of GSU's fuel factor was to be investigated.

3. On October 1, 1985, GSU filed with the Commission an application requesting authority to increase its rates within the portions of its service area over which the Commission has original rate jurisdiction. The application was assigned Docket No. 6525.

4. On October 1, 1985, GSU filed with each Texas municipality exercising original jurisdiction over GSU an application proposing a rate increase identical in amount to that in the application filed with the Commission.

5. In the application referred to in Finding of Fact No. 3, GSU made two alternative requests. First, GSU sought authorization to raise its rates by $89,601,486, or 10.8 percent, in the first year, and $87,790,277, or 9.55 percent, in the second year, a total increase for the two years of $177,391,763, or 21.4 percent, over total Texas adjusted test year revenues. This part of GSU's request, known as the Primary Filing, assumed Commission treatment of GSU's nuclear power plant project, River Bend Unit 1, as plant in service. Second, assuming that River Bend was not treated as plant in service, GSU alternatively sought authorization to increase its rates by $110,181,957, or 13.28 percent over total Texas adjusted test year revenues. This part of the request is known as the Alternate Filing. All classes of customers would be affected by GSU's proposed rate increases.

6. As discussed in Section I.B. of the Proposal for Decision, in a December 2, 1985, order, the Commission dismissed the Primary Filing portion of GSU's rate request.

7. Docket Nos. 6477 and 6525 were consolidated by examiner's order dated October 16, 1985.

8. As discussed in Section I.G. of the Proposal for Decision, numerous appeals by GSU of denials of its rate increase request by municipal regulatory authorities were consolidated with Docket No. 6525.

9. As discussed in Section I.G. of the Proposal for Decision, some municipal regulatory authorities ordered immediate rate reductions by GSU. GSU's timely filed appeals from these actions were assigned Docket Nos. 6660, 6748, and 6842.

10. Docket Nos. 6477 and 6525 were consolidated with Docket No. 6660 by order dated March 7, 1986, with Docket No. 6748 by order dated April 24, 1986, and with Docket No. 6842 by order dated June 13, 1986.

11. In an October 2, 1985, examiner's order, GSU's proposed rate increase was suspended for 150 days beyond the proposed effective date of November 5, 1985, until April 4, 1986. GSU subsequently agreed to an extension in the proposed effective date until December 20, 1985. In an October 24, 1985, examiner's order, implementation of the proposed rates beyond the otherwise effective date was resuspended for 150 days until May 19, 1986. GSU subsequently agreed to an extension of the proposed effective date until January 10, 1986. In a February 7, 1986, examiner's order, the implementation of the proposed rates was resuspended for 150 days until June 9, 1986.

12. The Commission did not rule on the appeal from Order No. 32 described in Section IV.I. of the Proposal for Decision within 15 days after the appeal was filed or extend the time for ruling on such appeal.

13. The parties to this case are those listed in Appendix C to the Proposal for Decision.

14. A prehearing conference in Docket No. 6477 was held on October 7, 1985. Prehearing conferences in Docket No. 6660 were held on January 14 and 28, 1986. Prehearing conferences in Docket Nos. 6477 and 6525 and, when later consolidated with these dockets, Docket Nos. 6660 and 6748, were held on October 21, November 25, and December 13, 1985, and January 3, 13 and 24, February 4 and March 14, 1986.

15. Regional hearings in Docket No. 6525 were held in Beaumont, Texas, on November 7, 1985, and in Conroe, Texas, on November 8, 1985.

16. The hearing on the merits began on March 17, 1986, and has not yet ended.

17. Proper notice was given to the public of the relief requested in this case, and of the prehearing conferences, regional hearings, and hearing on the merits in these dockets.

18. As described in Section I.A. of the Proposal for Decision, twice during the pendency of these dockets, GSU's fuel factor was reduced and refunds of fuel cost overrecoveries plus interest were ordered.

19. As discussed in Section I.G. of the Proposal for Decision, pursuant to stipulation of the parties and staff, interim rates for GSU were established within the city limits of municipalities which had ordered rate reductions. The examiner's orders establishing such interim rates in Docket Nos. 6660 and 6748 were subsequently declared void ab initio by the Commission, although that declaration was stayed.

20. As discussed in Part I.H. of the Proposal for Decision, pursuant to agreement of the parties and staff, GSU's summer differential was not implemented on May 1, 1986. Instead, GSU's winter rates were permitted to remain in effect.

21. In early May 1986, after evidence had been taken in the hearing on the merits for seven weeks, the parties and staff requested that the hearing be recessed to allow them to conduct settlement negotiations. It was agreed that each working day occurring during this period would extend the period by which the effective date had been suspended by two days. The hearing was reconvened from time to time to discuss the status of the negotiations.

22. As described in Section I.H. of the Proposal for Decision, on June 12, 1986, after notice had been provided to all parties, the hearing reconvened to enable any parties who wished to do so to express their positions concerning the stipulation which is attached as Appendix A to the Proposal for Decision (the Stipulation) and, if no opposition was expressed, to take evidence concerning it. No party opposed the Stipulation, and pursuant to agreement of the parties testimony and exhibits in support of it were admitted into evidence without objection or cross-examination. The parties and staff expressed willingness to waive their rights to written replies to exceptions and to any more than two days for exceptions to the Proposal for Decision.

23. The entire agreement of the parties and staff is set forth in the Stipulation, which states that it must be viewed as a whole, and is not effective unless approved by the Commission without modification.

24. For the reasons described in Sections IV. and V. of the Proposal for Decision, adoption of the Stipulation is in the public interest.

25. The resolutions of the issues contained in the Stipulation are reasonable, are adequately supported by evidence in the record, could have been the supportable results of this case had it been fully litigated, and should be adopted.

26. The Stipulation represents a negotiated settlement of the parties who represent a broad spectrum of affected interests.

27. The stipulated rates should be adopted for reasons set forth in Sections IV.A. and H. and V. of the Proposal for Decision.

28. GSU's Texas retail revenue requirement is $612,143,131, the Texas retail non-fuel related revenue decrease is $80,000,000; and the Texas retail fuel related revenue decrease is $114,357,490.

29. The total Texas retail revenue decrease is $194,357,490. The total retail kwh billing determinants upon which final rates should be calculated are 11,411,671,161 kwh for the Texas retail jurisdiction.

30. The jurisdictional allocation factors which should be used in this case are those proposed in GSU's testimony and reflected in the schedules attached to the Stipulation.

31. The $80,000,000 non-fuel related revenue decrease should be divided among the rate classes as shown on Stipulation Exhibit A.

32. The Texas retail jurisdictional revenue requirement should be allocated to the retail rate classes as shown in Stipulation Exhibit B. The rate design which should be followed is that reflected in Stipulation Exhibit C.

33. The value of invested capital for Texas retail is $879,637,776 and the rate of return on invested capital is 12.48 percent, both as shown on Stipulation Exhibit D. A Texas retail return of $109,778,794 is a reasonable return on GSU's invested capital used and useful in rendering service to the public.

34. The amount of GSU's adjusted test year-end level of Construction Work in Progress (CWIP) to be included in its invested capital as an exceptional form of rate relief necessary under applicable Texas law is at this time $125,921,483 (12.65 percent).

35. For reasons described in Sections IV.B. and V. of the Proposal for Decision, GSU should be required to implement refunds in accordance with Article III of the Stipulation.

36. The Texas retail jurisdictional adjusted test-year reconcilable fuel and fuel-related components of purchased power expenses total $238,960,394 as shown on Stipulation Exhibit G. The system-wide Texas fuel factor is 2.094 cents per kwh. The corresponding fixed fuel factors by voltage level are:

Delivery Voltage	Fixed Fuel Factor
230 KV	2.009 ¢ per KWH
69 KV/138 KV	2.022 ¢ per KWH
PRIMARY (2.4 KV through 34.5 KV)	2.116 ¢ per KWH
SECONDARY	2.173 ¢ per KWH

37. The components of reconcilable fuel costs are those approved by the Commission in Docket No. 5820, except that increased energy costs as a result of the Sabine River Authority rate case, approved by the Commission in Docket No. 5798, are also reconcilable. Determination of fuel costs associated with River Bend should be deferred from the date of commercial operation of River Bend Unit 1 until the date of the final order in the plant in service case, and are not subject to reconciliation at this time. The appropriate treatment of the nuclear fuel savings should be determined in the plant in service case. The methodology to be used in calculating the replacement power costs should be that described in Article IV of this Stipulation.

38. The September 1985, November 1985 and April 1986 fuel refunds are interim in nature. All overrecoveries and underrecoveries of fuel costs for the period February 1984 through February 1986 should be reconciled after a hearing on that issue in this case.

39. The stipulated treatment of fuel should be approved for reasons described in Sections IV.C. and V. of the Proposal for Decision.

40. The disputed issues concerning the Southern Companies purchased power contracts should be resolved after a hearing on that issue in this case in accordance with Article V of the Stipulation, for reasons described in Sections IV.D. and V. of the Proposal for Decision.

41. The facilities charges related to the Southern Companies purchased power contracts are included in GSU's cost of service.

42. The Commission's order approving the Stipulation should contain the language set forth in Article VI of the Stipulation, for reasons described in Sections IV.E. and V. of the Proposal for Decision.

43. GSU should be required to file a rate moderation plan in its plant in service case for River Bend as provided in Article VII of the Stipulation for reasons described in Sections IV.F. and V. of the Proposal for Decision.

44. GSU should be required to pay the reasonable expenses of the public parties and cities in accordance with the provisions of Articles VIII and X of the Stipulation for reasons described in Sections IV.G. and V. of the Proposal for Decision.

45. GSU should be required to cooperate with the cities' audit of GSU's AFUDC accounting methodologies as discussed in Section IV.J. of the Proposal for Decision.

46. The tariffs attached to the Stipulation accurately reflect the changes to GSU's existing tariffs agreed to by the parties, are reasonable, and should be approved. The rates set forth in such schedules should be effective for service on and after the date of the Commission's order approving the Stipulation.

47. GSU should be allowed to raise the issue of treatment of undistributed United Gas refund proceeds when the hearing in this case reconvenes, but this issue should not be addressed at this time for reasons described in Section V. of the Proposal for Decision.

48. All parties to these proceedings have been afforded an opportunity for a full hearing on all issues in this case.

B. Conclusions of Law

1. The Commission has jurisdiction over this rate change application pursuant to Sections 16, 26, 17(e) and 43(a) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986). The rates set herein will be applicable only to customers in Texas who are located in the unincorporated areas served by GSU, in any municipalities that have surrendered their original rate making jurisdiction to the Commission, and in any municipalities from whose actions appeals have been perfected and consolidated in this case.

2. GSU is a public utility as defined by PURA Section 3(c)(1).

3. The notice of the rate application and other relief requested in this docket is in substantial compliance with PURA Section 43 and with P.U.C. PROC. R. 21.22. Notice of the prehearing conferences, of the regional hearings, and of the hearing on the merits in these dockets is in full compliance with PURA Section 43 and with P.U.C. PROC. R. 21.22 and 21.27.

4. All parties were provided sufficient notice of the consideration by the Commission of the Stipulation. The procedures under which the Stipulation was considered satisfy the requirements of APTRA.

5. An appeal from Order No. 32 with respect to utilization of staff expert resources was not heard by the Commission. The Order is deemed approved by operation of P.U.C. PROC. R. 21.106(a).

6. The rates proposed by GSU have been suspended until June 9, 1986, in full accordance with PURA Section 43(d). Due to the length of the hearing, and in

accordance with agreement of the parties, these rates are continuing to be automatically suspended in the manner provided for in PURA Section 43(d).

7. Disposition of most of the issues in this case pursuant to the terms of the Stipulation is permissible under and in compliance with Section 13(e) of the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1986).

8. The Stipulation and Order approving it are based upon a negotiated settlement of the parties in this case, and should not be regarded as precedential.

9. GSU has the burden of proof to establish its revenue deficiency under its present rates and to establish the amount of such deficiency that will be collected under its proposed rates pursuant to PURA Section 40. GSU has proved its entitlement to the revenue requirement stipulated to by the parties.

10. Rates designed on the guidelines set out in this Proposal for Decision will allow GSU to recover its operating expenses, together with a reasonable return on its invested capital, complying with Section 39 of the PURA.

11. The rates prescribed herein will yield no more than a fair return upon the invested capital used by and useful to GSU in rendering service to the public, as provided by Section 40 of the PURA.

12. Inclusion of CWIP in rate base to the extent recommended in the Proposal for Decision is necessary to GSU's financial integrity within the meaning of PURA Section 41(a).

13. Section 27(b) of the PURA requires the Commission to fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each utility. Those aspects of the Stipulation dealing with these issues satisfy that requirement of PURA.

14. The depreciation rates proposed in the Stipulation conform with the requirements of PURA Section 27 and P.U.C. SUBST. R. 23.21(b)(1)(B).

15. The fuel and purchased power expenses stipulated to by the parties are appropriate for purposes of setting base rates and establishing fuel factors for GSU, satisfying the standards of Sections 39(a) and 41 of the PURA.

16. The treatment of fuel costs contained in the Stipulation generally complies with P.U.C. SUBST. R. 23.23(b)(2). To the extent that it does not, unique circumstances have been shown to exist justifying a good cause exception to such rule as provided for in P.U.C. SUBST. R. 23.2 and 23.23(b)(2)(B). These unique circumstances are that inclusion of nuclear fuel in the calculation of GSU's

fuel costs at this time is not justified for reasons discussed in Section IV.C. and V. of the Proposal for Decision.

17. The rates stipulated to by the parties meet the requirements of PURA Sections 38 and 41 through 48.

18. The rates and operating rules and regulations found in Stipulation Exhibit C are in conformance with the Commission's Rules.

19. The method of the refund set forth in Article III of the Stipulation is just and reasonable and meets the requirements of PURA and the Commission's substantive rules.

Respectfully submitted,

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

APPROVED on this the 20th day of June, 1986.

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

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APPENDIX B

EXAMINER'S ORDERS

Examiner's Order	Order Appealed?	Commission Action
Docket No. 6477		
Order No. 1 - Order and Notice of Prehearing Conference (Sept. 17, 1985)		
Docket No. 6525		
Order No. 1 - Order and Notice of Prehearing Conference (Oct. 2, 1985)		
Order No. 2 - Order Setting Deadline for Filing Responses to Motion to Dismiss (Oct. 7, 1985)		
Consolidated Docket Nos. 6477 and 6525		
Order No. 3 - Order Denying Motion to Dismiss Docket No. 6477 for Lack of Jurisdiction and Consolidating Docket Nos. 6477 and 6525 (Oct. 16, 1985)		
Order No. 4 - Order Granting Motions to Intervene, Reestablishing Effective Date and Resuspending Proposed Rates, Prehearing Order, Notice of Prehearing Conference and Notice of Hearing (Oct. 24, 1985)		
Order No. 5 - Order Granting in Part and Denying in Part General Counsel's Motion to Require Gulf States Utilities Company to Correct Certain Deficiencies in its Rate Filing Package (Oct. 28, 1985)		
Order No. 6 - Order and Notice of Regional Hearing to Hear Public Comment (Oct. 28, 1985)		
Order No. 7 - Order Reducing Gulf States Utilities Company's Interim Fuel Factor and Ordering Refunds of Fuel Cost Overrecoveries (Oct. 30, 1985)		

Examiner's Order	Order Appealed?	Commission Action
Consolidated Docket Nos. 6477 and 6525 (cont'd)		
Order No. 8 - Notice of Second Prehearing Conference and Order Establishing Number of Copies of Materials Parties Are to File, Granting Motions to Intervene and Motions to Consolidate City Appeals, Responding to Request to Clarify Order No. 5, and Adding Name to Service List (Nov. 12, 1985)		
Proposal for Decision Concerning Office of Public Utility Counsel's Motion to Dismiss (Nov. 15, 1985)	No appeal necessary	Proposal for Decision Adopted in Part (Dec. 2, 1985)
Order No. 9 - Order Finding that Deficiencies in Rate Filing Package Specified in Order No. 5 Have Been Corrected, Extending Deadline for Intervention, Discussing Clarification of Filing Requirements and Motions to Intervene, Granting Motions to Consolidate City Appeals, and Discussing Petition for Review of Decisions of Cities of Pinehurst and Rose City (Nov. 19, 1985)		
Order No. 10 - Notice of Third Prehearing Conference, Order Nunc Pro Tunc, and Order Ruling on Motions to Intervene and Certain Discovery Disputes (Dec. 3, 1985)		
Order No. 11 - Order Ruling on Discovery Disputes (Dec. 6, 1985)		
Order No. 12 - Order of Severance and Consolidation (Dec. 5, 1985)		
Order No. 13 - Order Concerning Request for Protective Order (Dec. 12, 1985)		

Examiner's Order	Order Appealed?	Commission Action
Consolidated Docket Nos. 6477 and 6525 (cont'd)		
Order No. 14 - Notice of Fourth Prehearing Conference and Order Ruling on Discovery Dispute, Adopting Proposed Protective Order, Denying Grouping of SYNPOL and TIEC for Purposes of Serving Documents, Granting Motions to Consolidate City Appeals and Granting State Treasurer's Motion to Intervene (Dec. 16, 1985)	Yes	Protective Order Dissolved (Jan. 9, 1986)
Order No. 15 - Notice of Fifth Prehearing Conference and Order Ruling on Discovery Disputes and Motions Relating Thereto, Motions to Consolidate City Appeals, Motions to Group State Agencies and SYNPOL's Motion to Withdraw Intervention (Jan. 3, 1986)		
Order No. 16 - Order Concerning Procedures for Determining Whether or Not Discovery Materials Are Protected from Public Disclosure (Jan. 9, 1986)		
Order No. 17 - Notice of Sixth Prehearing Conference and Order Ruling on Discovery Disputes (Jan. 14, 1986)		
Order No. 18 - Order Ruling on Confidentiality of Discovery Documents and Protective Order (Jan. 22, 1986)	Yes	Affirmed (Feb. 6, 1986)
Order No. 19 - Notice of Seventh Prehearing Conference, and Order Establishing Procedures and Deadlines Concerning Motions for Protective Order and Ruling on Motions to Consolidate City Appeals (Jan. 22, 1986)		
Order No. 20 - Order Ruling on Discovery Disputes and Amending Order No. 18 (Jan. 24, 1986)	Yes	Affirmed (Feb. 6, 1986)
Order No. 21 - Order Ruling on Disposition of Unclaimed Fuel Cost Overrecovery Refunds (Jan. 27, 1986)	Yes	Reversed (Feb. 19, 1986)

Examiner's Order	Order Appealed?	Commission Action
Consolidated Docket Nos. 6477 and 6525 (cont'd)		
Order No. 22 - Order Ruling on Confidentiality of Discovery Documents, Establishing a Deadline for Responding to Motions for Subpoena, and Discussing Motion to Intervene, and Order Nunc Pro Tunc (Jan. 28, 1986)	Yes	Affirmed (Feb. 6, 1986)
Order No. 23 - Order Ruling on Motions for Continuance, Extension of Testimony Prefiling Deadlines, Dismissal and Sanctions (Jan. 30, 1986)		
Order No. 24 - Notice of Eighth Prehearing Conference and Order Issuing Subpoena and Granting Motion to Consolidate (Feb. 4, 1986)		
Order No. 25 - Order Reestablishing Effective Date and Resuspending Proposed Rates, Continuing Hearing and Final Prehearing Conference, Extending Procedural Deadlines, Ruling on Motions for Sanctions, and Discussing Motion for Continuance (Feb. 7, 1986)		
Order No. 26 - Order Cancelling Prehearing Conference and Granting Motions to Intervene and Motions to Consolidate (Feb. 13, 1986)		
Order No. 27 - Order Granting Motions to Consolidate (Mar. 4, 1986)		
Order No. 28 - Order Concerning Representatives of Multiple Clients and the Motion to Lower Fuel Factor and Implement Refunds (Mar. 7, 1986)		
Docket No. 6660		
Order and Notice of Prehearing Conference (Jan. 2, 1986)		
Order and Notice of Prehearing (Jan. 15, 1986)		
Order (Jan. 24, 1986)		

Examiner's Order	Order Appealed?	Commission Action
Docket No. 6660 (cont'd)		
Interim Rate Order (Feb. 3, 1986)		
Examiner's Order (Feb. 21, 1986)		
Order Establishing Interim Rates and Cancelling Prehearing Conference (Mar. 7, 1986)		
Consolidated Docket Nos. 6477, 6525, and 6660		
Order No. 29 - Order Concerning Consolidation of Certain Appeals from Municipal Ratemaking Ordinances (Mar. 7, 1986)	Yes	Disapproved Stipulations and Dissolved Interim Rates
Order No. 30 - Order Concerning Motion for Reconsideration of Order No. 29 (Mar. 18, 1986)		
Order No. 31 - Order Granting State Treasurer's Motion Concerning Service List, Establishing Deadline for Motions to Strike Rate Design Testimony, Lowering Fuel Factor and Ordering Fuel Cost Overrecovery Refunds (Mar. 19, 1986)	Yes	Appeal Overruled by Operation of Law; Issued Commission Order Implementing Lower Fuel Factor and Refunds (Apr. 4, 1986)
Order No. 32 - Order Discussing Use of Commission Technical Resources in Writing Examiner's Report (Mar. 27, 1986)	Yes	Appeal Overruled by Operation of Law
Docket No. 6748		
Examiner's Order (Mar. 7, 1986)		
Examiner's Order (Mar. 18, 1986)		

Examiner's Order	Order Appealed?	Commission Action
Docket No. 6748 (cont'd)		
Order Determining Appropriateness of Consolidation (Mar. 19, 1986)		
Order Establishing Interim Rates and Cancelling Prehearing Conference (Mar. 19, 1986)		
Examiner's Order (April 1, 1986)		
Order Determining Appropriateness of Consolidation of Sour Lake and Rose Hill Acres Appeals (April 1, 1986)		
Order Establishing Interim Rates in Sour Lake and Rose Hill Acres and Cancelling Prehearing Conference (April 1, 1986)		
Order Establishing Interim Rates in Kountze and Silsbee and Cancelling Prehearing Conference (April 22, 1986)		
Consolidated Docket Nos. 6477, 6525, 6660, and 6748		
Order No. 33 - Order Concerning Consolidation of Certain Appeals from Ratemaking Ordinances (April 24, 1986)		
Order No. 34 - Order Concerning Consolidation of Certain Appeals from Ratemaking Ordinances (May 7, 1986)		
Order No. 35 - Order and Notice of Consideration of Stipulation (May 9, 1986)		
Order No. 36 - Order Concerning Consideration of Stipulation (May 15, 1986)		
Order No. 37 - Order Concerning Consideration of Stipulation (May 23, 1986)		

Examiner's Order	Order Appealed?	Commission Action
Consolidated Docket Nos. 6477, 6525, 6660, and 6748 (cont'd)		
Order No. 38 - Order Concerning Consideration of Stipulation (June 4, 1986)		
Order No. 39 - Order Concerning Consideration of Stipulation (June 5, 1986)		
Order No. 40 - Order Concerning Consideration of Stipulation (June 9, 1986)		
Order No. 41 - Order Concerning Consideration of Stipulation (June 11, 1986)		
Docket No. 6842		
Examiner's Order (April 23, 1986)		
Order Establishing Interim Rates in Lumberton and Cancelling Prehearing Conference (May 9, 1986)		
Consolidated Docket Nos. 6477, 6525, 6660, 6748, and 6842		
Order No. 42 - Order Consolidating Cases and Discussing Proceedings Relating to the Stipulation and the Unstipulated Issues (June 13, 1986)		
Order No. 43 - Order Discussing Scheduling Concerning Reconvening of Hearing and Commission Consideration of Stipulation (June 17, 1986)		

APPENDIX C

PARTIES AND REPRESENTATIVES

Party	Attorney(s) or, If No Attorney, Other Representative(s)
Gulf States Utilities Company (GSU)	Cecil L. Johnson, George A. Avery, Donald M. Clements, Jr., Haven Roosevelt, Patrick Cowlishaw, Bruce Stewart, Mark Ward, Jennifer Anderson
Texas Industrial Energy Consumers (TIEC)	Jonathan Day, Rex D. Van Middlesworth, Elena Marks, Ralph Gonzalez
North Star Steel Texas, Inc. (NSST)	Dick Brown (Docket No. 6477) Frederick H. Ritts, Peter J. P. Brickfield, Garrett A. Stone (other dockets)
Burlington Northern Railroad Company	Phyllis B. Schunck
State Agencies	W. Scott McCollough
State Treasurer	W. Scott McCollough; later Jerry L. Benedict
Office of Public Utility Counsel (OPC)	Jim Boyle, Walter Washington, Geoffrey Gay, Brad Yock, Jeanine Marie Lehman
Concerned Citizens of Southeast Texas	Joyce Roddy
Concerned Utility Ratepayers Association	W. H. Reid, Mack Gothia
General Counsel	Alfred R. Herrera, Bret Slocum, Frank Davis
County of Montgomery	D. C. Jim Dozier, Paul Taparauskus
Certain Cities (See Appendix D)	Don R. Butler, Steven A. Porter
City of Ames	
City of Anahuac	
City of Beaumont	Lane Nichols
City of Bevil Oaks	Jerry L. Hatton
City of Bridge City	H. D. Pate
City of Chester	
City of China	Richard Y. Ferguson, William H. Yoes
City of Colmesneil	
City of Crystal Beach	
City of Daisetta	
City of Dayton	
City of Devers	
City of Kountze	W. R. Overstreet
City of Lumberton	Larry W. Woodall, Don Butler (limited purpose)

Party	Attorney(s) or, If No Attorney, Other Representative(s)
City of Nome	Richard Y. Ferguson, William H. Porter
City of Orange	F. W. Windham
City of Pine Forest	Rodney Price
City of Pinehurst	Sam E. Dunn
City of Rose City	Larry C. Hunter
City of Rose Hill Acres	David Littleton
City of Silsbee	Roger Ratliff
City of Sour Lake	Richard Y. Ferguson, William H. Yoes
City of Vidor	Jerry L. Hatton
City of West Orange	
City of Woodville	
City of Groves	Earl Black
City of Nederland	W. E. Sanderson
City of Port Arthur	George Wikoff
City of Port Neches	H. P. Wright
City of Caldwell	
City of Cleveland	
City of Corrigan	
City of Franklin	
City of Groveton	
City of Houston	
City of Huntsville	Scott Bounds
City of Montgomery	
City of Navasota	
City of New Waverly	
City of Normangee	
City of Panorama Village	
City of Riverside	
City of Roman Forest	
City of Shenandoah	
City of Shepherd	

Party	Attorney(s) or, If No Attorney, Other Representative(s)
City of Somerville	
City of Splendora	
City of Todd Mission	
City of Trinity	
City of Willis	
City of Woodbranch	
City of Woodloch	

NOTE: Cities for which no representative is named are cities which are parties by virtue of being the appellee in an appeal consolidated with the rate case, and which did not otherwise appear or participate. Cities for whom attorneys are listed were also represented at various times by city officials such as the Mayor or City Councilmen. Several parties represented by a listed attorney also were represented at various times by a consultant or expert witness. In addition to the parties named above, SYNPOL Inc. was granted intervenor status, but subsequently withdrew. Also, one E. J. Vandermark filed a terse request to intervene. In Examiner's Order No. 10, E. J. Vandermark was notified that pursuant to P.U.C. PROC. R. 21.41, a brief statement indicating the nature of justiciable interest in the case (e.g., is E. J. Vandermark a customer?) needed to be filed before the request to intervene could be ruled on. E. J. Vandermark never filed such a statement or appeared at any proceedings in the case, so that motion to intervene was never granted.

APPENDIX D

ATTORNEYS REPRESENTING LARGE NUMBER OF PARTY CLIENTS

Party Clients	Attorney(s)
TIEC-	Jonathan Day Rex D. Van Middlesworth Elena Marks Ralph Gonzalez
Chevron Chemical Company	
E. I. du Pont de Nemours & Co.	
Firestone Synthetic Rubber Co.	
P. D. Glycol	
Goodyear Tire & Rubber Co.	
Mobil Chemical Company	
Owens-Illinois, Inc.	
Texaco Chemical Company	
Temple-Eastex, Inc.	
Union Carbide Corporation	
Union Oil Company of California	
State Agencies-	W. Scott McCollough
Texas Air Control Board	
Texas Department of Corrections	
Texas Department of Health	
Texas Department of Highways and Public Transportation	
Texas Department of Human Services	
Texas Department of Parks and Wildlife	
Texas Department of Public Safety	
Texas Employment Commission	
Texas Forest Service	
Texas Rehabilitation Commission	
Texas Railroad Commission	
Beaumont State Center	
Board of Pardons and Paroles	
National Guard Armory Board	
Veterinary Medical Diagnostic Laboratory	
Lamar University - Orange	
Lamar University - Port Arthur	
Midwestern University	
Sam Houston State University	
Cities-*	Don R. Butler Steven A. Porter
Beaumont	
Bevil Oaks	
Bridge City	

Party Clients	Attorney(s)
Cities-	
China	
Nome	
Orange	
Rose City	
Silsbee	
Sour Lake	
Vidor	
Groves	
Nederland	
Port Arthur	
Port Neches	

*Also Lumberton for limited purpose.

APPENDIX E

ACTIONS BY CITIES ORDERING REDUCTIONS IN GSU'S CURRENT RATES

City and Date of Ordinance	Action Taken in Ordinance	Appeal Docket
Port Neches		
12/27/85	Reduce rates to lowest rate now charged for respective classes in GSU system, including La., but with Tx. fuel factor	6660
1/23/86	Deny rate increase; reconfirm 12/27 rates	6525
Port Arthur		
1/7/86	Reduce rates to lowest overall rate, including purchased power capacity costs and fuel factor, charged for respective customer classes in GSU system, including La.	6660
1/28/86	Deny rate increase; reconfirm 1/7 rates	6525
Groves		
1/13/86	Same as Port Arthur 1/7 ordinance	6660
1/27/86	Deny rate increase; reconfirm 1/13 rates	6525
Nederland		
2/5/86	Same as Port Arthur 1/7 ordinance	6660
2/25/86	Deny rate increase; reconfirm 2/5 rates	6525
Bridge City		
1/21/86	Same as Port Neches 12/27 ordinance	6660
10/15/85	Deny rate increase	6525
Vidor		
1/23/86	Same as Port Arthur 1/7 ordinance	6660
1/23/86	Deny rate increase, reconfirm above rates	6525
Pinehurst		
2/13/86	Same as Port Neches 12/27 ordinance	6748
10/8/85	Deny rate increase	6525
Rose City		
2/13/86	Same as Port Arthur 1/7 ordinance	6748
1/30/86	Deny rate increase	6525
Orange		
2/12/86	Same as Port Arthur 1/7 ordinance	6748
2/2/86	Deny rate increase	6525

City and Date of Ordinance	Action Taken in Ordinance	Appeal Docket
Beaumont		
2/18/86	Reduce residential rates to lowest overall rate, including purchased power capacity costs and fuel factor, charged for residential service in GSU system in La.	6748
3/18/86	Deny rate increase, reconfirm 2/18 rates	6525
Sour Lake		
2/24/86	Reduce rates to lowest rate now charged for respective classes in GSU system, including La.	6748
2/5/86	Deny rate increase	6525
Rose Hill Acres		
2/26/86	Reduce rates to lowest overall rate, including purchased power capacity costs and fuel adjustment, charged for residential service in GSU system in La., figuring fuel adjustment as currently billed in La.	6748
1/14/86	Deny rate increase	6525
Silsbee		
3/11/86	Same as Port Arthur 1/7 ordinance	6748
1/14/86	Deny rate increase	6525
Kountze		
3/10/86	Same as Beaumont 2/18 ordinance	6748
1/16/86	Deny rate increase	6525
Lumberton		
3/20/86	Same as Beaumont 2/18 ordinance	6842
10/17/85	Deny rate increase	6525

APPENDIX F

APPEALS OF CITY RATESETTING ACTIONS AND CONSOLIDATIONS WITH ENVIRONS CASE

(Dates reference the date of the appeal or order. Numbers in parentheses indicate the number of the order of consolidation.)

City and Division	Rates Reduced		Increase Denied	
	Appeal Filed	Consolidation Ordered	Appeal Filed	Consolidation Ordered
Beaumont Division				
Ames			10/31	11/19(9)
Anahuac			10/31	11/19(9)
Beaumont	2/28	4/24(33)	4/2	5/7(34)
Bevil Oaks			1/24	2/13(26)
Bridge City	1/31	3/7(29)	11/1	11/19(9)
Chester			11/1	11/19(9)
China			2/10	3/4(27)
Colmesneil			10/24	11/12(8)
Crystal Beach			11/1	11/19(9)
Daisetta			11/1	11/19(9)
Dayton			10/24	11/12(8)
Devers			11/15	12/16(14)
Grayburg[1]				
Hardin[2]				
Kountze	3/21	4/24(33)	1/22	2/13(26)
Liberty[1]				
Lumberton	4/3	6/13(42)	10/31	11/19(9)
Nome			2/10	3/4(27)
Orange	2/25	4/24(33)	2/14	3/4(27)
Pine Forest			3/17	5/7(34)
Pinehurst	2/25	4/24(33)	10/24	11/12(8)
Rose City	2/25	4/24(33)	2/10	3/4(27)
Rose Hill Acres	3/10	4/24(33)	1/21	2/13(26)
Silsbee	3/21	4/24(33)	1/21	2/13(26)
Sour Lake	3/7	4/24(33)	2/11	3/4(27)
Vidor	2/3	3/7(29)	2/11	5/7(34)
W. Orange			2/12	5/7(34)
Woodville			11/1	11/19(9)
Port Arthur Division				
Groves	1/20	3/7(29)	2/11	5/7(34)
Nederland	2/14	3/7(29)	3/3	5/7(34)
Port Arthur	1/10	3/7(29)	2/11	5/7(34)
Port Neches	12/31	3/7(29)	2/11	5/7(34)

City and Division	Rates Reduced		Increase Denied	
	Appeal Filed	Consolidation Ordered	Appeal Filed	Consolidation Ordered
Western Division				
Anderson[1]				
Bremond[2]				
Caldwell			10/31	11/19(9)
Calvert[3]				
Chateau Woods[4]				
Cleveland			11/25	12/16(14)
Conroe[3]				
Corrigan			11/1	11/19(9)
Cut and Shoot[2]				
Franklin			11/1	11/19(9)
Groveton			11/1	11/19(9)
Houston			2/5	3/4(27)
Huntsville			1/13	2/4(24)
Kosse[2]				
Madisonville[2]				
Montgomery			12/2	1/3(15)
N. Cleveland[2]				
Navasota			11/1	11/19(9)
New Waverly			11/19	12/16(14)
Normangee			11/25	12/16(14)
Oak Ridge North[4]				
Patton Village[4]				
Panorama Village			11/1	11/19(9)
Plum Grove[2]				
Riverside			11/15	1/3(15)
Roman Forest			10/31	11/19(9)
Shenandoah			10/31	11/19(9)
Shepherd			11/1	11/19(9)
Somerville			10/31	11/19(9)
Splendora			11/1	11/19(9)
Todd Mission			11/25	12/16(14)
Trinity			11/25	12/16(14)
Willis			11/1	11/19(9)
Woodbranch			11/15	12/16(14)
Woodloch			1/3	1/22(19)

[1]City took no action concerning GSU's rate application.
[2]City elected to go with Commission's decision concerning GSU's rate application.
[3]City suspended application but has taken no other action.
[4]City has surrendered original jurisdiction to Commission.

Source of information in footnotes 1 to 4 is testimony by GSU witness Jefferson in support of Stipulation.

CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	PUBLIC UTILITY COMMISSION OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	
APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL.	
APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDING OF THE CITY OF ORANGE, ET AL.	
APPEAL OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDINGS OF THE CITY OF LUMBERTON	

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled inquiry, application and appeals were processed in accordance with applicable statutes by an examiner who prepared and filed a Proposal for Decision Concerning Parties' Stipulation of Majority of Issues in Case (Proposal for Decision) containing Findings of Fact and Conclusions of Law, which Proposal for Decision is ADOPTED and made a part hereof. The Commission further issues the following Order:

1. The application of Gulf States Utilities Company (Gulf States) and the final relief sought by the other participants in this case are hereby GRANTED to the extent recommended in the Proposal for Decision.

2. The Stipulation attached as Appendix A to the Proposal for Decision (Stipulation) is hereby APPROVED. Gulf States shall comply with the terms of the Stipulation as discussed in the Proposal for Decision.

3. The proposed tariff which constitutes Stipulation Exhibit C is hereby APPROVED effective the date of this Order. The rates set forth in the tariff shall be effective for service on and after the date of this Order in areas in which the Commission is exercising its original or appellate jurisdiction or original and appellate jurisdiction in this case.

4. Gulf States shall use the depreciation rates set forth in Stipulation Exhibit E, until further order of this Commission.

5. Gulf States shall make refunds to its customers in the cities listed in Stipulation Exhibit F in the manner set forth in Article III of the Stipulation.

6. Gulf States shall carefully evaluate its activities relating to Cajun Electric Power Cooperative's actions concerning the Big Cajun power plants in the manner set forth in Article IV of the Stipulation, and shall file testimony in its next general rate case which addresses its efforts in this regard.

7. The Commission hereby orders that Gulf States defer those costs (including Operation & Maintenance, insurance, fuel savings and carrying costs on Construction Work in Progress not currently included in rate base) which have been capitalized with respect to River Bend Unit I during its construction, as well as the buybacks of capacity (which includes capacity and operating costs) from Cajun Electric Power Cooperative, Inc., including fuel savings related thereto, (hereafter referred to as "the Cajun buyback payment") effective with the commercial in-service date of this unit as defined by the Commission; provided, however, that the amount to be deferred with respect to the capacity and operating costs but excluding fuel costs of the Cajun buyback payment for the first twelve months thereof on a Texas retail basis shall not exceed the amounts actually paid to Cajun during that period or $106,557,000, whichever is smaller. Such deferrals shall also include the decommissioning costs, depreciation expense and amortization of Contra AFUDC which would otherwise be recorded on the unit and full income tax normalization to properly reflect the above items. The deferral of these costs and the accrual of carrying costs thereon should continue until such time as the effective date of the rates approved in the rate case to be filed following the date on which River Bend Unit I is placed in-service for ratemaking purposes. The carrying costs described above shall be accrued at Gulf States' overall net AFUDC rate calculated in accordance with prescribed federal regulatory guidelines.

   The recovery of all deferred costs will be included in the rate case at the time the unit is placed in-service for ratemaking purposes. However, the Commission reserves the right to exclude from rate base or other recovery any portion of the expenditures for the plant, AFUDC, capitalized expenses, capitalized depreciation, capitalized carrying costs or other capitalized

costs which the Commission determines to be related to plant that is not used and useful or to have been imprudently spent or incurred. The Commission further expressly reserves the right to exclude from rate base or other recovery any portion of the deferred capacity payments resulting from the Cajun buyback which are determined to be unreasonable or unnecessary and, in such connection, the Commission reserves the right to consider whether such deferred capacity payments can and should be reduced, pro rata, for recovery purposes to the same extent that the Commission excludes from rate base or other recovery the amounts described in the preceding sentence. Further, the parties to the rate case described above may urge any other argument they may have regarding the inclusion or exclusion of the expenses of the Cajun buyback in cost of service. The Commission further reserves the right to consider, and all parties to the rate case described above shall have the right to raise, the reasonableness, prudence and appropriate regulatory treatment of any deferred expenses in the rate case in which rate base treatment for plant is requested.

8. In its plant in service case for River Bend Unit 1, Gulf States shall propose a rate moderation plan designed to defer the recognition in rates of a portion of River Bend's costs from the early years until the later years of operation.

9. Gulf States shall pay the expenses of the Public Parties Committee and the cities in the manner set forth in Articles VIII and X of the Stipulation.

10. Gulf States shall cooperate with the intervenor cities in their audit of Gulf States' AFUDC accounting methodologies in the manner set forth in Article XVIII of the Stipulation.

11. This Order is final only as to those matters resolved by the Stipulation. The hearing on the merits in the above styled dockets will continue in the manner and for the purposes set forth in the Proposal for Decision, and will culminate in a final order of the Commission in these dockets concerning those issues not resolved in the Stipulation.

12. This Order is deemed effective on the date of signing.

13. 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 or reserved for subsequent proceedings in these dockets in the manner provided in the Proposal for Decision are DENIED for want of merit.

SIGNED AT AUSTIN, TEXAS on this the _____ day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

mg

CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	PUBLIC UTILITY COMMISSION OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	
APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL.	
APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDING OF THE CITY OF ORANGE, ET AL.	
APPEAL OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDINGS OF THE CITY OF LUMBERTON	

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled inquiry, application and appeals were processed in accordance with applicable statutes by an examiner who prepared and filed a Proposal for Decision Concerning Parties' Stipulation of Majority of Issues in Case (Proposal for Decision) containing Findings of Fact and Conclusions of Law, which Proposal for Decision, with the following modifications, is ADOPTED and made a part hereof.

a. Finding of Fact No. 48 is amended to read as follows:

> 48. Although the hearing on the merits in this case has not been completed, all parties to these proceedings have been afforded an opportunity for a hearing concerning those issues resolved in the Stipulation.

b. Finding of Fact No. 49 is added to read as follows:

> 49. The Stipulation is intended to resolve only those issues that are expressly covered by its terms. The Commission's approval of the Stipulation shall have no effect on (1) the State Agencies' challenges to Emergency Rule 23.23, currently pending before the Commission and the Travis County District Court, 345th Judicial District, and (2) the State Treasurer's challenge to the Commission ruling that the unclaimed property statute does not apply to unclaimed fuel refund checks or to the ultimate distribution of those funds.

c. The revisions to Stipulation Exhibits C and G proposed by general counsel in the memorandum attached as Appendix A to this Order are adopted. These revisions are typographical in nature and do not modify the agreement reached by the parties.

d. The revisions to the Proposal for Decision proposed by the examiner in the memorandum attached as Appendix B to this Order are adopted. These revisions are typographical in nature and do not modify the examiner's substantive recommendations.

The Commission further issues the following Order:

1. The application of Gulf States Utilities Company (Gulf States) and the final relief sought by the other participants in this case are hereby GRANTED to the extent recommended in the Proposal for Decision.

2. The Stipulation attached as Appendix A to the Proposal for Decision (Stipulation) is hereby APPROVED. Gulf States shall comply with the terms of the Stipulation as discussed in the Proposal for Decision.

3. The proposed tariff which constitutes Stipulation Exhibit C is hereby APPROVED effective the date of this Order. The rates set forth in the tariff shall be effective for service on and after the date of this Order in areas in which the Commission is exercising its original or appellate jurisdiction or original and appellate jurisdiction in this case.

4. Gulf States shall use the depreciation rates set forth in Stipulation Exhibit E, until further order of this Commission.

5. Gulf States shall make refunds to its customers in the cities listed in Stipulation Exhibit F in the manner set forth in Article III of the Stipulation.

6. Gulf States shall carefully evaluate its activities relating to Cajun Electric Power Cooperative's actions concerning the Big Cajun power plants in the manner set forth in Article IV of the Stipulation, and shall file testimony in its next general rate case which addresses its efforts in this regard.

7. The Commission hereby orders that Gulf States defer those costs (including Operation & Maintenance, insurance, fuel savings and carrying costs on Construction Work in Progress, not currently included in rate base) which have been capitalized with respect to River Bend Unit I during its construction, as well as the buybacks of capacity (which includes capacity and operating costs) from Cajun Electric Power Cooperative, Inc., including fuel savings related thereto, (hereafter referred to as "the Cajun buyback payment") effective with the commercial in-service

date of this unit as defined by the Commission; provided, however, that the amount to be deferred with respect to the capacity and operating costs but excluding fuel costs of the Cajun buyback payment for the first twelve months thereof on a Texas retail basis shall not exceed the amounts actually paid to Cajun during that period or $106,557,000, whichever is smaller. Such deferrals shall also include the decommissioning costs, depreciation expense and amortization of Contra AFUDC which would otherwise be recorded on the unit and full income tax normalization to properly reflect the above items. The deferral of these costs and the accrual of carrying costs thereon should continue until such time as the effective date of the rates approved in the rate case to be filed following the date on which River Bend Unit I is placed in-service for ratemaking purposes. The carrying costs described above shall be accrued at Gulf States' overall net AFUDC rate calculated in accordance with prescribed federal regulatory guidelines.

The recovery of all deferred costs will be included in the rate case at the time the unit is placed in-service for ratemaking purposes. However, the Commission reserves the right to exclude from rate base or other recovery any portion of the expenditures for the plant, AFUDC, capitalized expenses, capitalized depreciation, capitalized carrying costs or other capitalized costs which the Commission determines to be related to plant that is not used and useful or to have been imprudently spent or incurred. The Commission further expressly reserves the right to exclude from rate base or other recovery any portion of the deferred capacity payments resulting from the Cajun buyback which are determined to be unreasonable or unnecessary and, in such connection, the Commission reserves the right to consider whether such deferred capacity payments can and should be reduced, pro rata, for recovery purposes to the same extent that the Commission excludes from rate base or other recovery the amounts described in the preceding sentence. Further, the parties to the rate case described above may urge any other argument they may have regarding the inclusion or exclusion of the expenses of the Cajun buyback in cost of service. The Commission further reserves the right to consider, and all parties to the rate case described above shall have the right to raise, the reasonableness, prudence and appropriate regulatory treatment of any deferred expenses in the rate case in which rate base treatment for plant is requested.

8. In its plant in service case for River Bend Unit 1, Gulf States shall propose a rate moderation plan designed to defer the

recognition in rates of a portion of River Bend's costs from the early years until the later years of operation.

9. Gulf States shall pay the expenses of the Public Parties Committee and the cities in the manner set forth in Articles VIII and X of the Stipulation.

10. Gulf States shall cooperate with the intervenor cities in their audit of Gulf States' AFUDC accounting methodologies in the manner set forth in Article XVIII of the Stipulation.

11. This Order is final only as to those matters resolved by the Stipulation. The hearing on the merits in the above styled dockets will continue in the manner and for the purposes set forth in the Proposal for Decision, and will culminate in a final order of the Commission in these dockets concerning those issues not resolved in the Stipulation.

12. This Order is deemed effective on the date of signing.

13. 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 or reserved for subsequent proceedings in these dockets in the manner provided in the Proposal for Decision are DENIED for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 25th day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

I dissent regarding the adoption of Article VIII of the Stipulation. Unless properly modified, it is unlawful, as reflected in my comments at the open meeting.

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
for RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

mg

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

JUN 25 PM 2:11

June 25, 1986

The Honorable Elizabeth Drews
Administrative Law Judge
Hearings Division
7800 Shoal Creek Blvd., 400N
Austin, TX 78757

RE: GSU - Docket No. 6525 et al - Stipulation

Dear Ms. Drews:

In a final review of the Stipulation I noticed two typographical errors. These errors in no way affect the substance of the Stipulation. The errors appear in Stipulation Exhibit C and Stipulation Exhibit G.

In Stipulation Exhibit C (the Tariff, Section III, Sheet No. 2, Revision 9, page 1 of 1, attached) reference is made to "Schedule FF, Sheet No. 41." As Mr. Cecil Johnson, attorney for GSU confirmed at the June 25, 1986 Final Order Meeting, the reference should be to "Schedule FF, Sheet No. 48."

In Stipulation Exhibit G, under the column labeled "Total Electric" on the line entitled "Return", the amount $207,199,830 is noted. The proper return amount is $270,199,830. The correct amount can be confirmed by referring to Stipulation Exhibit D, on the line for "Return". (There is a one dollar difference between the Return amount shown in Exhibit D and the Return amount shown in Exhibit G; the difference is due to rounding). Additionally, the sum of the amounts noted under the column labeled "Total Electric" is $1,430,500,430 when a return amount of $270,199,830 is used, thereby reconfirming that $270,199,830 is the correct amount.

I request that the proper corrections be made and incorporated into the record as you may deem appropriate. I would emphasize that these corrections in no way modify the Stipulation.

Thank you for your consideration of this matter.

Respectfully submitted,

Alfred R. Herrera
Staff Attorney

ld

Attachments

cc: All parties of record

GULF STATES UTILITIES CO.
Electric Service
Texas

SECTION NO.:	III
SECTION TITLE:	Rate Schedule and Charges
SHEET NO.:	2
EFFECTIVE DATE:	Proposed
REVISION:	9
APPLICABLE:	Entire Texas Service Area
PAGE:	1 of 1

SCHEDULE RS

INTERIM RATE
RESIDENTIAL SERVICE | T

I. Applicability

This rate is applicable under the regular terms and conditions of the Company for all domestic purposes in single family residences or individual apartments. This rate is not applicable to service for common facilities at apartments and other multi-dwelling units. Service will be single-phase except that three-phase service may be rendered hereunder, at Company's option, where such service is available. Where a customer has more than one meter, each meter shall be billed separately. Resale, breakdown, standby, or auxiliary service is not applicable hereunder.

II. Monthly Bill

A. Customer Charge — $7.00 per month | R

B. Energy Charge | C

All KWH Used — 3.973¢/KWH* | R

Except that in the Billing Months of November through April, all KWH used in excess of 1,000 KWH will be billed at 1.973¢/KWH*. | T, R

*Plus fixed fuel factor per Schedule FF, Sheet No. 41.

C. Minimum Charge

The Minimum Monthly Charge will be the Customer Charge.

Supersedes RS (5-28-86)

From Exhibit C

STIPULATION EXHIBIT D

Public Utility Commission of Texas
Gulf States Utilities - Docket 6525
Invested Capital and Return

	AS ADJUSTED	
	TOTAL ELECTRIC	TEXAS RETAIL
PLANT IN SERVICE	$3,061,270,788	$1,245,338,563
ACCUMULATED DEPRECIATION	949,416,423	390,592,319
NET PLANT	$2,111,854,365	$ 854,746,244
CWIP IN RATE BASE	298,963,529	125,921,483
PROPERTY HELD FOR FUTURE USE	61,952,335	25,967,486
WORKING CAPITAL ALLOWANCE	8,171,691	3,036,924
MATERIALS AND SUPPLIES	12,279,826	5,626,558
PREPAYMENTS	7,609,352	3,097,758
FUEL INVENTORY	24,857,174	10,335,780
LESS		
DEFERRED TAXES	324,802,345	134,213,092
PRE-1971 INVESTMENT TAX CREDITS	5,136,552	2,091,029
CUSTOMER DEPOSITS	14,177,576	5,484,304
PROPERTY INSURANCE RESERVE	2,315,121	1,205,249
INJURIES AND DAMAGES RESERVE	1,470,503	675,160
OTHER COST FREE CAPITAL	12,723,429	5,425,623
TOTAL INVESTED CAPITAL	$2,165,062,746	$ 879,637,776
Rate of Return	0.1248	0.1248
Return	$ 270,199,831	$ 109,778,794

STIPULATION EXHIBIT G

PUBLIC UTILITY COMMISSION OF TEXAS
GULF STATES UTILITIES COMPANY - DOCKET 6525
REVENUE REQUIREMENT

	AS ADJUSTED	
	TOTAL ELECTRIC	TEXAS RETAIL
NON-RECONCILABLE PURCHASED POWER	$92,883,669	$43,796,516
RECONCILABLE FUEL AND PURCHASED POWER	564,970,665	238,960,394
OPERATIONS AND MAINTENANCE	224,045,597	106,985,814
DEPRECIATION & AMORTIZATION	102,679,511	41,524,426
OTHER TAXES	60,753,488	29,268,425
INTEREST ON CUSTOMER DEPOSITS	1,033,545	399,806
STATE INCOME TAXES	4,225,824	0
FEDERAL INCOME TAXES	109,708,211	41,428,956
RETURN	207,199,830	109,778,794
REVENUE REQUIREMENT	$1,430,500,340	$612,143,131
LESS MISCELLANEOUS REVENUE		6,580,005
LESS INTERRUPTIBLE ADJUSTMENT		13,879,991
LESS FUEL REVENUE		238,960,394
BASE RATE REVENUE REQUIREMENT		$352,722,741
TEST YEAR ADJUSTED BASE RATE REVENUE		
BASE RATE REV. PER SCH. Q-1	$ 446,602,732	
LESS INTERRUPTIBLE ADJ.	$ 13,879,991	
TEST YEAR ADJUSTED BASE RATE REVENUE		$432,722,741
BASE RATE REVENUE DEFICIENCY		$(80,000,000)
RETAIL RECONCILABLE FUEL EXPENSE		$238,960,394
TEST YEAR FUEL REVENUE PER SCH Q-1		353,317,884
FUEL RELATED REVENUE DEFICIENCY		$(114,357,490)
TOTAL RETAIL REVENUE DEFICIENCY		$(194,357,490)

Public Utility Commission of Texas

Memorandum

TO: Chairman Rosson
Commissioner Thomas
Commissioner Campbell
All Parties of Record
General Counsel

FROM: Elizabeth Drews Elizabeth Drews

DATE: June 24, 1986

SUBJECT: Proposal for Decision - Docket Nos. 6477, 6525, 6660, 6748 and 6842 - GSU

On Friday I issued in these dockets a Proposal for Decision Concerning Parties' Stipulation of Majority of Issues in Case, which you are scheduled to consider on Wednesday, June 25, 1986. There are two minor errors in the Proposal for Decision which should be corrected. First, a sentence was deleted from page 15 which explains what "CEPCO" stands for and the extent of that entity's ownership in River Bend. Second, on line 3 of page 19, "April 19, 1987" should read "April 1987". I do not expect anyone to object to these changes. Attached are revised pages. I apologize for any inconvenience these amendments might cause.

bdb

7800 Shoal Creek Boulevard • Suites 400-450N
Austin, Texas 78757 • 512/458-0100 • EOE/AAE

III. Description of the Company

GSU was incorporated under the laws of the State of Texas in 1925. It is headquartered in Beaumont, Texas.

GSU is an investor-owned electric utility engaged principally in generating electric energy and transmitting, distributing and retailing such energy. It provides electric utility service in a 28,000 square mile area in Southeastern Texas and South Central Louisiana which extends a distance of over 350 miles, from a point east of Baton Rouge, Louisiana, to about 50 miles east of Austin, Texas. GSU's service area includes the northern suburbs of Houston and such large cities as Conroe, Huntsville, Port Arthur, Orange and Beaumont, Texas, and Lake Charles and Baton Rouge, Louisiana. GSU also sells electricity to municipalities and rural electric cooperatives in both Texas and Louisiana. GSU provides electric utility service to more than 500,000 customers. During the test year, which ended March 31, 1985, GSU served approximately 275,260 Texas retail customers. During the test year, 51 percent of GSU's electric operating revenues was derived from within Louisiana, and 49 percent from within Texas.

GSU's only proposed generating unit actively under construction is River Bend Unit 1, a 940 megawatt (mw) boiling water nuclear unit being constructed near St. Francisville, Louisiana. GSU currently expects River Bend to be placed in service in June 1986. GSU has an installed capacity of 6692 mw, including its 70 percent ownership of River Bend. (Cajun Electric Power Cooperative (CEPCO) owns the other 30 percent.) Of this total, 5429 mw is gas-fired, 605 mw is western coal-fired and 658 mw represents GSU's share of River Bend. During the recent past, approximately 60 percent of GSU's system generation was provided by its gas-fired units, 15 percent by its western coal-fired units and 25 percent primarily by purchased power.

GSU's transmission system consists of a backbone 500 kilovolt (kv) system across South Louisiana into East Texas, with an underlying network of 230 and 138 kv lines. There is also a 345 kv system in the westernmost portion of GSU's service area. GSU is a member of the Southwest Power Pool.

In addition to its electric utility business, GSU produces and sells steam for industrial use, and it purchases and retails natural gas in the Baton Rouge, Louisiana, area. During the test year, 92 percent of GSU's operating revenue was derived from the electric utility business, 5 percent from the steam business and 3 percent from the gas business. The gas and steam products businesses are conducted entirely in Louisiana.

GSU has three wholly-owned subsidiaries: Prudential, Varibus and Finance. Prudential is engaged primarily in exploration, development and operation of oil and gas properties. Varibus operates intrastate gas pipelines in Louisiana primarily to serve GSU's generating stations. Varibus also holds lignite deposits in East Texas for possible use by GSU or sale to others. Finance is

ratepayers from then until April 1987 would be only $30 million. (The examiner doubts that a final order in a GSU filed plant in service case will be in effect as early as April 1987. Even if GSU can file its plant in service case in October 1986, absent a settlement, the hearing in that case is likely to be lengthy. However, while this would affect the numbers, it would not affect the outcome of this part of Dr. Divine's analysis.)

B. Article III: Refunds to Customers in Certain Cities

Under Article III of the Stipulation, GSU would refund to its customers in sixteen cities the amount of base rates collected in each such city since a specified date which exceeded the base rate amount that would have been collected under the Stipulation. The sixteen cities are the fifteen cities whose rate reduction ordinances were the subject of GSU's appeals in Docket Nos. 6660, 6748 and 6842, as well as the City of West Orange. For the fifteen cities, the specified beginning dates for the refund period are the dates GSU and each city agreed to in their stipulations in Docket Nos. 6660, 6748 and 6842. Regarding West Orange, GSU witness William J. Jefferson testified:

> One City, the City of West Orange, adopted a Resolution regarding reduced rates instead of enacting an ordinance. Since that Resolution does not indicate any tariff filing date or any effective date, the Company has agreed, for settlement purposes only, to a date determined in essentially the same manner as the others. That method was to allow ten days, from the date an ordinance was adopted, for the tariff filing specified in the ordinance and then to assume, as some ordinances specified, that the lower rates would go into effect on the first day of the next monthly billing cycle.

The total amount to be refunded through May 31, 1986, in the sixteen cities is estimated to be $5,273,000. The cities would have the right to review the accuracy of GSU's calculations, confer with GSU personnel, and if necessary have a hearing concerning the amount of the refund. The refunds would be through a one-time bill credit based on historical usage during the refund period for each customer taking service at the time of the refund.

The State Agencies had asked GSU to estimate the unclaimed amount of the refunds which would be provided pursuant to Article III of the Stipulation. Mr. Jefferson testified that in light of the Article III refund methodology, there will be no unclaimed amounts. However, he noted that customers have left, or moved within, the GSU system during the relevant period. If this had not been true, those customers would have received refunds of approximately $337,000.

C. Article IV: Fuel

The Stipulation resolves some rate case issues pertaining to GSU's fuel costs, and defers others either until the fuel reconciliation hearing to be held

TELEPHONE

Valley Telephone Cooperative, Docket No. 7170. Examiner's Report recommending revised depreciation rates granted May 13, 1987.

Fort Bend Telephone Company, Docket No. 7184. Examiner's Report adopted April 29, 1987. Utility's request to detariff and deregulate inside wire on an intrastate basis in accordance with FCC Docket No. 79-105 granted.

General Telephone Company of the Southwest, Inc., Docket No. 7206. Examiner's Report recommending revised depreciation rates granted June 26, 1987.

Southwestern Bell Telephone Company, Docket No. 7434. Dismissed by Examiner's Order dated April 27, 1987, based on withdrawal of complaint by NETCOM, the complainant.

Central Texas Telephone Cooperative, Docket No. 7140. Examiner's Report adopted March 26, 1987. Commission approved two of three proposed depreciation rate changes.

Coleman County Telephone Cooperative, Docket No. 7228. Examiner's Report adopted June 26, 1987. Depreciation rate changes and amortization schedules approved as requested.

ELECTRIC

Texas-New Mexico Power Company, Docket No. 7325. Examiner's Report adopted June 26, 1987. Application for variance in tariff with regard to specific customer granted as requested.

South Plains Electric Cooperative, Docket No. 2644. Application dismissed May 7, 1987. Applicant withdrew CCN amendment application.