




Control Number: 15102



Item Number: 877

Addendum StartPage: 0



Pub  Utility Co
1701 N. Cor
P. O. B
Austin, Tex
512 / 936-7000

April

Ms. Carolyn Shellman
Bickerstaff, Heath, Smiley, Pollan, Keever &
1700 Frost Bank Plaza
816 Congress Avenue
Austin, TX 78701-2443

RE: Surcharge in Docket No. 15102

Dear Ms. Shellman:

We have reviewed the Company's June billing cycle. At this point it appears that there is a difference of one thousand dollars apart in our calculations. The motions for rehearing are taken up.

I anticipate that if the Commission do so before the June cycle. I therefore calculated in time for the June cycle.

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Office of Public Utility Counsel

7800 Shoal Creek Boulevard, Ste. 290E

Austin, Texas 78757

(Tel.) 512/475-3700 • (Fax) 512/475-5707

Suzi Ray McClellan
Public Counsel

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August 23, 1996 PUBLIC UTILITY COMMISSION
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Honorable Lilo Pomerleau
Administrative Law Judge
State Office of Administrative Hearings
Austin, Texas 78701

Re: SOAH Docket No. 473-96-0117, PUC Docket No. 15102

Dear Judge Pomerleau:

In response to your Order No. 27 the Office of Public Utility Counsel ("OPC") is pleased to inform you that OPC, Gulf States, Burlington Northern, and Cajun have managed to resolve our disagreements regarding declassification of the documents listed in OPC's June 24, 1996, Notice to Disclose in an amicable manner. Unless unexpected complications arise in instituting the parties' agreement, it will not be necessary to hold a declassification hearing in docket 15102.

Sincerely,

Alex M. Schnell
Assistant Public Counsel

cc: All Parties of Record

687

see

Public Utility Commission of Texas

Memorandum

FEB 20 1996
PUBLIC UTILITY COMMISSION
FILING OFFICE

TO: Chairman Pat Wood, III
Commissioner Robert W. Gee
Commissioner Judy Walsh
All Parties of Record

FROM: Dan Jones, Policy Analyst, Office of Policy Development *LS*
Danny Bivens, Chief Policy Analyst, Office of Policy Development *AB*
Roger Stewart, Senior Attorney, Office of Policy Development *RS*

RE: Draft Preliminary Order in SOAH Docket No. 473-96-0117
(PUC Docket No. 15102)

Item No. 3, February 22, 1996 Open Meeting

DATE: February 20, 1996

Please find attached for filing the Draft Preliminary Order proposed by the Office of Policy Development in PUC Docket No. 15102.

Neither Chairman Wood, Commissioner Walsh, nor Commissioner Gee suggested changes to the Draft Preliminary Order.

cc: Adib, Parviz
Al-Jabir, Ali
Davis, Steve
Duncan, John
Hamilton, Kathy
Kjellstrand, Leslie
Laakso, John
Mueller, Paula
Oswalt, Vicki

Panjavan, Sarut
Pope, Ed
Sapperstein, Scott
Silverstein, Alison
Slocum, Bret
Vogel, Carole
Wilson, Martin
Acting Dir, Financial Review

PUC DOCKET NO. 15102
SOAH DOCKET NO. 473-96-0117

APPLICATION OF GULF STATES
UTILITIES COMPANY TO
RECONCILE ITS FUEL COSTS, FOR
PERMISSION TO DELAY
REQUESTING A SURCHARGE, OR IN
THE ALTERNATIVE, FOR A
SURCHARGE TO RECOVER UNDER-
RECOVERED FUEL EXPENSE

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PUBLIC UTILITY COMMISSION

OF TEXAS

DRAFT PRELIMINARY ORDER

On December 7, 1995, Gulf States Utilities Company (GSU or Gulf States) filed an application requesting reconciliation of its fuel costs for the period beginning January 1, 1994 and ending June 30, 1995 (the "reconciliation period"). At the end of the reconciliation period, GSU's fuel account balance was under-recovered by approximately \$22 million.¹ Rather than implement a surcharge at the conclusion of this docket, GSU has proposed to carry forward the under-recovered balance to a future proceeding. In the alternative, GSU proposes to surcharge the under-recovered fuel balance, less any Commission-authorized fuel cost disallowance, over a 12-month period. During the reconciliation period, Gulf States has collected fuel revenues via two separate fixed fuel factors that were set in Docket Nos. 10894 and 12712.² Additionally, GSU became a wholly owned subsidiary of Entergy Corporation on December 31, 1993. Therefore, this is the first fuel reconciliation that addresses GSU/Entergy's post-merger fuel costs.

¹ Application of Gulf States Utilities Company to Reconcile its Fuel Costs, Docket No. 13170, 20 P.U.C. BULL. 1026 (April 18, 1995) (mem.). GSU's fuel costs were reconciled through December 31, 1993 and the fuel over/under recovery balance was set to zero.

² Application of Gulf States Utilities to Reconcile Fuel Costs, Establish New Fixed Fuel Factors, and Recover Its Under-Recovered Fuel Expense, Docket No. 10894, 19 P.U.C. BULL. 1401 (Aug. 19, 1993); Petition of Gulf States Utilities Company to Lower Its Fixed Fuel Factor and For Good Cause Exception to PUC Subst. R. 23.23(b)(2), Docket No. 12712, 19 P.U.C. BULL. 1761 (April 28, 1994) (mem.). Docket No. 10894 fixed fuel factors were applied during the months of January and February 1994; Docket No. 12712 fixed fuel factors were applied during the months of March 1994 through June 1995.

I. ISSUES TO BE ADDRESSED

Pursuant to Tex. Gov't Code Ann. § 2003.047(e) (Vernon Pamphlet 1995), the Commission must provide to the administrative law judge (ALJ) a list of issues or areas that must be addressed in any proceeding referred to the State Office of Administrative Hearings (SOAH). The Commission identifies the following issues that must be addressed in this docket:

1. Were the prices charged to GSU by its fuel- and power-supplying affiliates during the reconciliation period in accordance with PURA § 2.208(b)?
2. What level of fuel savings have accrued to Texas ratepayers during the reconciliation period as a result of GSU's merger with Entergy Corporation; and, has GSU's Texas retail jurisdiction received a proportionate share of Entergy's systemwide merger-related fuel savings?
3. Are GSU's non-fixed fuel factor sales subsidized to any degree by Texas retail customers paying the fixed fuel factor?
4. To what extent did GSU seek to market any excess capacity at its Spindletop natural gas storage facility to third parties during the reconciliation period in an effort to reduce fuel costs for GSU's ratepayers; and, were GSU's efforts in this respect reasonable?
5. What is the effect on Gulf States and its ratepayers, if any, of GSU's change in coal inventory accounting methodology from last in, first out (LIFO) to average cost in the absence of a corresponding rate base adjustment to fuel inventory in a general rate case?
6. Was the duration of GSU's River Bend refueling outage number five (RF-5) reasonable and was the outage prudently planned and managed?

7. Was the extended forced outage 94-03 at River Bend due, in whole or in part, to imprudent management by GSU/Entergy?
8. Assuming that the extended forced outage 94-03 at River Bend was *not* due to imprudent management and that fuel costs for GSU increased as a result of the outage, should GSU be required to absorb some or all of the increased fuel costs, or should this risk be borne entirely by GSU's ratepayers?

Nothing in this Preliminary Order precludes the parties and the ALJ from raising and addressing any issue relevant to these proceedings which is not specified in this Order. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under Tex. Gov't Code Ann. § 2003.047(e).

II. ISSUES NOT TO BE ADDRESSED

Furthermore, the Commission takes the position that the following issue need not be addressed in this proceeding, for the reasons stated:

Whether GSU should be allowed to continue to allocate a portion of the margins from off-system sales to its shareholders subsequent to the end of the reconciliation period? P.U.C. SUBST. R. 23.23(b)(2)(B)(vi)(III) states that, unless otherwise specified by the Commission, eligible fuel expenses shall include "revenues from off-system sales in their entirety." Thus, any sharing mechanism for off-system sales revenues is subject to the full discretion of the Commission.

In *Petition of Southwestern Public Service for Fuel Reconciliation*, Docket No. 14174 (Jan. 5, 1996) (not yet reported), the Commission ordered Southwestern to include 100 percent of the revenues received from off-system sales as an offset to eligible fuel expense on a prospective basis. Consistent with that policy decision, and regardless of the ultimate determination of the allocation of margins during the reconciliation period as discussed in Section III of this Order,

the continuation of a sharing mechanism for off-system sales subsequent to June 30, 1995 is not an issue to be addressed in this case.

III. THRESHOLD LEGAL/POLICY DETERMINATIONS

Parties filed briefs on February 9, 1996 addressing certain legal and policy issues. The following statement of position was reached in consideration of the parties' arguments. Accordingly, pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. § 2001.058(c) (Vernon Pamphlet 1996), the Commission states its position on the following threshold legal/policy issues:

Does GSU have a vested interest in 25 percent of the margins from off-system sales during the reconciliation period; or, in the alternative, are the margins from off-system sales, in their entirety, subject to a reasonableness review and reconciliation?

Gulf States collected fuel revenues under two separate fixed fuel factors during the reconciliation period. For the months of January and February 1994, GSU collected fuel revenues through the fixed fuel factors set in Docket No. 10894. For the months of March 1994 through June 1995, fuel revenues were collected through the fixed fuel factors set in Docket No. 12712.

In Docket No. 10894, the Commission found that "[b]eginning with the effective date of the fixed fuel factor approved in this proceeding, it is reasonable to split the adders between the ratepayers and shareholders 75/25 percent in favor of the ratepayers."³ By way of this finding, the Commission granted GSU an exception to P.U.C. SUBST. R. 23.23(b)(2)(B)(vi)(III) by *explicitly* specifying a treatment of margins from off-system sales other than that which would be effective by default, *i.e.*, the classification of 100 percent of the revenues from off-system sales as an offset to eligible fuel expense.

³ Docket No. 10894, Finding of Fact No. 323, 19 P.U.C. BULL 1401, 1671 Off-system sales *adders* are synonymous with off-system sales *margins*.

Gulf States next revised its fixed fuel factors in Docket No. 12712, filed on January 19, 1994. In its application, GSU proposed to revise its fixed fuel factors to reflect merger-related savings pursuant to the stipulation in Docket No. 11292.⁴ Interim rates were effectuated in March 1994 and the docket was ultimately stipulated by the parties at the interim rate level. Unlike Docket No. 10894, the Commission's final order in Docket No. 12712 did not specify the allocation of margins from off-system sales.

In addition, Gulf States reconciled its fuel costs from October 1, 1991 through December 31, 1993 in Docket No. 13170. Again, the Commission's final order did not contain language specifying the allocation of margins from off-system sales.

In its brief, GSU claims that "Gulf States has a vested interest in the Commission's prior holdings until those holdings are modified prospectively." With respect to this statement, GSU references *Southwestern Bell Tel. Co. v. Public Utility Comm'n of Texas*, 615 S.W.2d 947, 956-57 (Tex. Civ. App.--Austin 1981) (*SWB*), which states that, in determining whether vested rights are destroyed or impaired by the application of a statute retroactively, one must consider:

- a) whether the public interest is advanced or retarded;
- b) whether the retroactive provision gives effect to or defeats the *bona fide* intentions or reasonable expectations of affected persons; and
- c) whether the statute surprises persons who have long relied on a contrary state of the law.

GSU argues that it has a vested interest in the 75/25 split because (1) it is not in the public interest to issue a prospective order, and then rescind such order after the fact; (2) it had a reasonable expectation that the 75/25 split adjudicated in Docket No. 10894 would not be retroactively changed, and (3) it will be "surprised" if a retroactive modification occurs.

⁴ *Application of Entergy Corporation and Gulf States Utilities Company For Sale, Transfer, or Merger*, Docket No. 11292, 19 P.U.C. BULL. 1889, 2018 (Dec. 29, 1993).

Addressing the effect of Docket No. 12712, GSU argues that the sole purpose of that docket was to reflect merger-related savings in a revised fuel factor. Regardless of the statements in the stipulation and final order disavowing any precedential value with regard to the principles and methodology underlying the calculation of the fixed fuel factor, GSU contends that Docket No. 12712 did nothing to change the allocation of margins approved in Docket No. 10894.

In support of its position, GSU also cites the Commission's treatment of Southwestern Public Service Company's (SPS) off-system sales margins. GSU notes that, in Docket No. 10602, a stipulation was adopted by the Commission which provided for a 75/25 allocation of off-system sales margins in favor of the ratepayers.⁵ GSU also observes that the propriety of the split for SPS was not expressly litigated in either of the subsequent in which the split was maintained, Docket No. 11011 or Project No. 11520.⁶ Not until Docket No. 14174 was this treatment altered, and only then on a prospective basis from the end of the reconciliation period.

General Counsel agrees with GSU's position that the 75/25 allocation of margins from off-system sales established in Docket No. 10894 should continue throughout the entire reconciliation period. General Counsel argues that, because the allocation established in Docket No. 10894 was neither litigated nor addressed in Docket Nos. 12712 or 13170, the 75/25 percent allocation methodology was implicitly continued. Thus, the General Counsel contends that the allocation may not be changed for a reconciliation period which has ended.

The Office of Public Utility Counsel (OPC) and Cities both take the position that the margins from off-system sales are subject to a reasonableness review and reconciliation from March 1994 through the end of the reconciliation period. OPC contends that the Commission

⁵ *Petition of Southwestern Public Service Company for Permanent Authorization of Periodic Opportunity Sales Margin Credits*, Docket No. 10602, 17 P.U.C. BULL. 2056 (Feb. 5, 1992) (mem.).

⁶ *Petition of Southwestern Public Service Company for Authority for a Fuel Reconciliation*, Docket No. 11011, 18 P.U.C. BULL. 1259 (Jan. 14, 1993) (mem.); *Petition of Southwestern Public Service Company for Authority to Refund Fuel Cost Over-Recoveries*, Project No. 11512, ____ P.U.C. BULL. ____ (Nov. 12, 1992).

did not confer a “vested interest” in future margins from off-system sales upon GSU in Docket No. 10894 or in any docket subsequent to that proceeding. OPC further argues that GSU lost its opportunity to share in off-system sales margins in Docket Nos. 12712 and 13170 because the Commission did not expressly find in the final order issued in those dockets that the 75/25 allocation scheme should continue in either case. Likewise, Cities claim that the fixed fuel factor set in Docket No. 12712 did not incorporate an express exception to the requirements in P.U.C. SUBST. R. 23.23(b)(2)(B)(vi)(III) that eligible fuel expenses include revenues from off-system sales in their entirety; therefore, the Cities assert that the rule is deemed effective, rather than any exception to the rule. The fuel factors in Docket No. 12712 became effective in March 1994, preceding the final order in Docket No. 13170, which was issued on April 18, 1995. Therefore, OPC and Cities maintain that all margins from off-system sales are subject to reconciliation from March 1994 forward.

The Commission takes the position that the margins from off-system sales are, in their entirety, subject to a reasonableness review and reconciliation for the period of April 28, 1994 through the end of the reconciliation period.⁷ The rule addressing the treatment of off-system sales requires that the revenues from such sales, in their entirety, be included in eligible fuel *unless otherwise specified by the Commission*. In Docket No. 10894, the Commission specifically found a split in margins to be reasonable “beginning with the effective date of the fixed fuel factor approved in [that] proceeding.” In contrast, in Docket No. 12712, the Commission did not specify any allocation of margins. Therefore, the Commission’s prior 75/25 split was modified *prospectively*, consistent with the rule, *i.e.*, 100 percent allocation to the ratepayers. This allocation will be followed in the reconciliation of fuel expenses and revenues in this case unless GSU can justify an exception to the rule.

The Commission disagrees with GSU’s contention that it has a vested interest in the 75/25 split under the holding in *SWB*. The fixed fuel factors and the associated exceptions that were approved in Docket No. 10894 ceased to exist upon the rendition of the final order in Docket No. 12712, which did not expressly carry forward those exceptions. GSU should not

⁷ April 28, 1994 is the date of the final order in Docket No. 12712.

have had any expectation that the split would continue past that point and, therefore, should not be “surprised” by the application of the plain language of the rule. In actuality, it may be GSU’s ratepayers and the parties to Docket Nos. 12712 and 13170 who are “surprised” by GSU’s proposed continuance of the 75/25 split, when there was no specific exception granted by the Commission in either docket, as required by the rule.

Regarding GSU’s argument relating to the treatment of SPS’s margins in Docket No. 14174, the Commission finds that docket to differ substantially from the case at hand. In Docket No. 14174, the Commission found that “[i]t is reasonable to interpret the final order in Docket No. 10602 to contemplate only a prospective change in the 75/25 margin-splitting formula in light of the language in the stipulation entered into in that proceeding.”⁸ In the case of GSU, there is no language in Docket Nos. 10894⁹, 12712, or 13170 that would dictate a prospective-only adjustment of the allocation of margins similar to that approved in Docket No. 14174.

IV.

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at the hearing. Furthermore, this Order is not subject to motion for rehearing or motion for reconsideration.

⁸ Docket No. 14174, Finding of Fact No. 25(a)

⁹ As discussed previously, however, the Commission finds that GSU had good reason to rely upon the 75/25 split authorized in Docket No. 10894 until the issuance of the final order in Docket No. 12712

SIGNED AT AUSTIN, TEXAS the _____ day of February, 1996.

PUBLIC UTILITY COMMISSION OF TEXAS

PAT WOOD III, CHAIRMAN

ROBERT W. GEE, COMMISSIONER

JUDY WALSH, COMMISSIONER

ATTEST:

PAULA MUELLER
SECRETARY OF THE COMMISSION

PUC DOCKET NO. 15102
SOAH DOCKET NO. 473-96-0117

APPLICATION OF GULF STATES § PUBLIC UTILITY COMMISSION
UTILITIES COMPANY TO §
RECONCILE ITS FUEL COSTS, FOR § OF TEXAS
PERMISSION TO DELAY §
REQUESTING A SURCHARGE, OR IN §
THE ALTERNATIVE, FOR A §
SURCHARGE TO RECOVER UNDER- §
RECOVERED FUEL EXPENSE §

ORDER REQUESTING BRIEFING ON THRESHOLD ISSUES

Pursuant to the Administrative Procedure Act, Tex. Gov't. Code Ann. § 2001.058(c) (Vernon Pamphlet 1996), which requires the Public Utility Commission of Texas (Commission) to provide the State Office of Administrative Hearings (SOAH) with a "written statement of applicable rules or policies," the Commission, through the Office of Policy Development (OPD), issues this Order requesting briefing on threshold issues.

Any party or movant to intervene may file a brief which addresses the following threshold legal and policy issues in this docket.

Background

For the entirety of the reconciliation period in this application, Gulf States Utilities Company (GSU) has allocated off-system sales adders to ratepayers and shareholders on a 75/25 percent basis, respectively. This allocation is consistent with Finding of Fact 323 in Docket No. 10894, which states:¹

Beginning with the effective date of the fixed fuel factor approved in this proceeding, it is reasonable to split the adders between the ratepayers and shareholders 75/25 percent in favor of the ratepayers.

¹ *Application of Gulf States Utilities to Reconcile Fuel Costs, Establish New Fixed Fuel Factors, and Recover Its Under-Recovered Fuel Expense*, Docket No. 10894, Finding of Fact 323, 19 P.U.C. BULL. 1401, 1671 (August 19, 1993).

Subsequent to Docket No. 10894, GSU last changed its fuel factors in Docket No. 12712 which was stipulated by the parties.² These fuel factors were effectuated beginning with the March 1994 billing cycle and have remained in effect through the end of the reconciliation period.

Issues to be Addressed

- 1) In Docket No. 10894, in setting GSU's fixed fuel factors which incorporated a specific allocation of the margins from off-system sales, did the Commission confer upon the utility a vested interest in such future margins; or, in the alternative, are the margins from off-system sales, in their entirety, subject to a reasonableness review and reconciliation as are all other components of eligible fuel?
- 2) In Docket No. 12712, the parties stipulated and agreed that "...this stipulation as to the appropriate fuel factor and as to the method of calculation of such factor shall not be binding on any party hereto for any other purpose and shall have no precedential value in any subsequent proceeding."³ Furthermore, the Final Order in Docket No. 12712 states, in part:⁴

Conclusion of Law No. 9

The fuel factor approved herein is in the nature of a temporary rate under P.U.C. SUBST. R. 23.23(b)(2)(A)(iii) and is subject thereunder to adjustment and possible refund during the utility's next reconciliation proceeding or general rate case.

Ordering Paragraph No. 2

The Commission's Order in this docket is based upon the agreement of the Parties and, therefore, the Commission has not and should not be deemed to have endorsed, accepted, agreed to, or approved any underlying principle or methodology. Neither should this Order be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the agreement.

Considering the Stipulation and Final Order in Docket 12712, are the margins from off-system sales, in their entirety for the period of March 1994 through the end of the reconciliation period, subject to a reasonableness review and reconciliation, as are all other components of eligible fuel?

² *Petition of Gulf States Utilities Company to Lower Its Fixed Fuel Factor and For Good Cause Exception to PUC Subst. R. 23.23(b)(2)*, Docket No. 12712, 19 P.U.C. BULL. 1761 (April 28, 1994) (mem.).

³ Docket No. 12712, Stipulation for Approval of Changes in Fuel Factors, Section 3 (Feb. 11, 1994).

⁴ Docket No. 12712, Final Order, Conclusion of Law No. 9, Ordering Paragraph No. 2 (April 28, 1994).

Briefs on these threshold legal and policy issues are due by 3:00 p.m., 9 February 1996. Unless specifically requested, parties shall not file responses to briefs filed pursuant to this Order. Briefs should not exceed 15 pages.

SIGNED AT AUSTIN, TEXAS the 30th day of January 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



**STEPHEN J. DAVIS
DEPUTY DIRECTOR
OFFICE OF POLICY DEVELOPMENT**

Beck
Dugmae

DOCKET NO. 15102

APPLICATION OF GULF STATES §
UTILITIES COMPANY TO RECONCILE §
ITS FUEL COSTS, FOR PERMISSION TO §
DELAY REQUESTING A SURCHARGE, OR §
IN THE ALTERNATIVE, FOR A §
SURCHARGE TO RECOVER UNDER- §
RECOVERED FUEL EXPENSE §

PUBLIC UTILITY COMMISSION
OF TEXAS

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PUBLIC UTILITY COMMISSION

ORDER OF REFERRAL

The Public Utility Commission of Texas (Commission) refers this docket to the State Office of Administrative Hearings (SOAH) and requests the assignment of an administrative law judge (ALJ) to conduct a hearing and issue a proposal for decision, if such is necessary in the event one or more issues are contested by the parties.

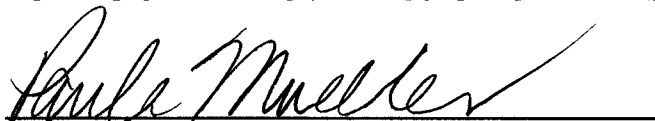
In order to develop a list of issues and areas that must be addressed in the docket, as well as any necessary statement of Commission policy, precedent, and/or position on a threshold legal issue relevant to this proceeding, Gulf States Utilities Company (GSU) shall, and General Counsel and any other interested party of record, may file, with the Commission, a list of issues to be addressed in the docket by January 16, 1996.

The Commission will issue a list of issues and areas that must be addressed in this proceeding, pursuant to Tex. Gov't Code Ann., § 2003.047(e) (Vernon Pamphlet 1995), and any necessary statement of Commission policy, precedent, and/or position on threshold issues relevant

to this proceeding, pursuant to Tex. Gov't Code Ann. § 2001.058(c) (Vernon Pamphlet 1995), on February 22, 1996.

SIGNED AT AUSTIN, TEXAS the 9th day of January 1996.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in cursive script, appearing to read "Paula Mueller", is written over a horizontal line.

PAULA MUELLER

SECRETARY OF THE COMMISSION

Beck

SOAH DOCKET NO. 473-96-0117
PUC DOCKET NO. 15102

APPLICATION OF GULF STATES	§	PUBLIC UTILITY COMMISSION
UTILITIES COMPANY TO RECONCILE	§	
ITS FUEL COSTS, FOR PERMISSION	§	OF TEXAS
TO DELAY REQUESTING A	§	
SURCHARGE, OR IN THE ALTERNATIVE,	§	
FOR A SURCHARGE TO RECOVER	§	
UNDER-RECOVERED FUEL EXPENSE	§	

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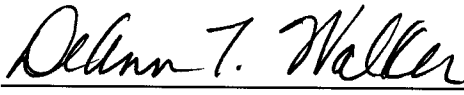
ORDER NO. 1
GRANTING EXTENSION

On January 9, 1996, this docket was referred to the State Office of Administrative Hearings (SOAH). The Order of Referral included a requirement to file a list of issues by January 16, 1996. On January 16, 1996, Gulf States Utilities Company (GSU) filed a motion for extension of time.

The request of GSU for an extension until Friday, January 19, 1996, is **GRANTED**. All parties that filed a list of issues on January 16, 1996, can supplement the pleadings on the new deadline for filing a list.

SIGNED AT AUSTIN, TEXAS the 16th day of January 1996.

PUBLIC UTILITY COMMISSION OF TEXAS



DEANN T. WALKER
ADMINISTRATIVE LAW JUDGE

State Office of Administrative Hearings



Steven L. Martin
Chief Administrative Law Judge

January 16, 1996

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

RE: SOAH Docket No. 473-96-0117
PUC Docket No. 15102

APPLICATION OF GULF STATES UTILITIES COMPANY TO RECONCILE ITS FUEL COSTS, FOR PERMISSION TO DELAY REQUESTING A SURCHARGE, OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-RECOVERED FUEL EXPENSE

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of Order No. 2 in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Lilo D. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

/ib

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

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SOAH DOCKET NO. 473-96-0117
PUC DOCKET NO. 15102

APPLICATION OF GULF STATES
UTILITIES COMPANY TO
RECONCILE ITS FUEL COSTS, FOR
PERMISSION TO DELAY
REQUESTING A SURCHARGE, OR IN
THE ALTERNATIVE, FOR A
SURCHARGE TO RECOVER UNDER-
RECOVERED FUEL EXPENSE

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ORDER NO. 2
REQUIRING GSU TO SUBMIT COMPUTER DISK

Gulf States Utilities Company (GSU) submitted a proposed protective order with its December 7, 1995 application. As soon as possible, but no later than 2:00 a.m. Thursday, January 18, 1996, GSU SHALL hand-deliver a disk containing a copy of the document, which can be formatted using WordPerfect, to the SOAH Administrative Law Judge (ALJ) at Room 504 of the Clements Building.

SIGNED AT AUSTIN, TEXAS the 16th day of January 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



LILLO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE

State Office of Administrative Hearings



96 FEB 21 AM 11:10

PUBLIC UTILITY COMMISSION
FILING CLERK

Steven L. Martin
Chief Administrative Law Judge

February 20, 1996

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

RE: SOAH Docket No. 473-96-0117
PUC Docket No. 15102

APPLICATION OF GULF STATES UTILITIES COMPANY TO RECONCILE ITS FUEL COSTS, FOR PERMISSION TO DELAY REQUESTING A SURCHARGE, OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-RECOVERED FUEL EXPENSE

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of a memo to the parties in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Lilo D. Pomerleau/ib".

Lilo D. Pomerleau
Administrative Law Judge

/ib

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

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State Office of Administrative Hearings



Steven L. Martin
Chief Administrative Law Judge

TO: All Parties of Record

FROM: Lilo D. Pomerleau *LDP*
Administrative Law Judge

DATE: February 20, 1996

RE: SOAH DOCKET NO. 473-96-0117; PUC DOCKET NO. 15102
*Application of Gulf States Utilities Company to Reconcile Its Fuel Costs, for
Permission to Delay Requesting a Surcharge, Or in the Alternative, for a
Surcharge to Recover Under-Recovered Fuel Expense*

22 FEB 21 AM 11:48
PUBLIC UTILITY COM. ST. 11
FILING CLERK

On February 15, 1996, Gulf States Utilities Company (GSU) filed a letter requesting some clarification concerning the questions I will raise about the Cities' motion to declassify. GSU needs to know what witnesses, if any, it will need to bring. Although GSU sought a telephonic conference with all the parties, I did not receive the letter until late on February 16, and February 19 is a Commission and SOAH holiday. Therefore, I will issue this memorandum on February 20, 1996.

It is highly unlikely that I will be asking detailed factual questions about any of the documents. The emphasis will be on whether the documents are indeed trade secret material and how the documents, if disclosed, would disadvantage GSU. For instance, regarding Cities 1-45, I wonder whether this type of document is prepared for the FERC or DOE. Whether GSU wishes to bring a GE witness will likely turn on how much information remains in dispute after negotiations with the Cities.

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

12-001
State Office of Administrative Hearings



15 APR 11 1996
PUBLIC UTILITY COMMISSION
FILING OFFICE
Steven L. Martin
Chief Administrative Law Judge

April 9, 1996

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

RE: SOAH Docket Nos. 473-96-0626 and 473-96-0117
PUC Docket Nos. 15489 and 15102

APPLICATION OF GULF STATES UTILITIES COMPANY TO REVISE ITS FIXED FUEL FACTORS

APPLICATION OF GULF STATES UTILITIES COMPANY TO RECONCILE ITS FUEL COSTS, FOR PERMISSION TO DELAY REQUESTING A SURCHARGE, OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-RECOVERED FUEL EXPENSE

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of Order No. 3 in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, reading "Eva King Andries".

Eva King Andries
Administrative Law Judge

/s/

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

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State Office of Administrative Hearings



Steven L. Martin
Chief Administrative Law Judge

January 22, 1996

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

RE: SOAH Docket No. 473-96-0117
PUC Docket No. 15102

APPLICATION OF GULF STATES UTILITIES COMPANY TO RECONCILE ITS FUEL COSTS, FOR PERMISSION TO DELAY REQUESTING A SURCHARGE, OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-RECOVERED FUEL EXPENSE

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of Order No. 3 in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Lilo D. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

/ib

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

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APPLICATION OF GULF STATES
UTILITIES COMPANY TO
RECONCILE ITS FUEL COSTS, FOR
PERMISSION TO DELAY
REQUESTING A SURCHARGE, OR IN
THE ALTERNATIVE, FOR A
SURCHARGE TO RECOVER UNDER-
RECOVERED FUEL EXPENSE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ORDER NO. 3
ORDER ADOPTING ATTACHED PROTECTIVE ORDER

Gulf States Utilities Company (GSU) submitted a proposed protective order with its December 7, 1995 application. On December 22, 1995, the City of Port Neches (City) filed a motion for an order that would modify the proposed protective order. The City requests the order to adopt certain language proposed by the City, in order to address the following points:

1. Any privileged or exempt material other than trade secret material to be classified as confidential must be specified in the agreement. In its January 4 reply to GSU, the City proposes to modify the protective order by designating only materials such as trade secret, proprietary third party data, and employee privacy as confidential.
2. Highly sensitive designation should be limited to trade secret information that could result in harm to GSU in pending fuel litigation or it should be reserved for a very restricted set of specified data, which the City does not define.
3. Because the City does not compete with GSU it should be entitled to a copy of material classified as "highly sensitive" in a manner similar to employees of the Commission and the Office of Public Utility Counsel (OPC).
4. Portions of the protective order that are addressed in the Commission procedural rules or in SOAH orders should be eliminated to avoid redundancy.

GSU filed a response on January 3, 1996, requesting that the City's motion be denied and that the protective order be adopted as submitted.

Addressing the City's first point, GSU argues that in past proceedings, several categories of information have been deemed confidential, such as proprietary third party data, customer names and usage data, and information on individual employees. GSU further states that the Commission has routinely allowed parties to designate discoverable information as confidential under statutory, constitutional, or common law. Moreover, parties who wish to challenge the designation may do so. Regarding the second point, GSU argues that the City's specific restriction to limit highly sensitive materials to that information that could result in harm in a *pending fuel litigation* is arbitrary. GSU contends that the highly sensitive designation applies to documents that could cause competitive harm even outside the context of litigation. As to the third issue, GSU notes that the City does not have a statutory duty to participate in regulating utilities. The provision in the proposed protective order allowing General Counsel and OPC to copy highly sensitive documents recognizes their unique role as entities that are not customers, receive no reimbursement of expenses, and have no potential to enter the utility business as a competitor. As to the final issue, GSU notes that the procedures are contained in the protective order for efficiency, bounding them in one document, and that the procedural rules do not address all necessary matters.

The Administrative Law Judge (ALJ) was unpersuaded by the City's arguments and therefore **DENIES** the City's motion. The attached protective order, as modified by the ALJ, is **ADOPTED** for use in this proceeding. The ALJ finds that the City was unable to definitively list all the categories that a party might claim as confidential. Instead, the ALJ adopts GSU's proposal to define protected materials as "any information considered to be confidential by law, either statutory, constitutional, or common law." As to the City's remaining concerns, the ALJ believes that any discovery abuses can be dealt with through sanction procedures in P.U.C. PROC. R. 22.161.

SIGNED AT AUSTIN, TEXAS the 22nd day of January 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS


LILLO D. POMERLEAU

ADMINISTRATIVE LAW JUDGE

SOAH DOCKET NO. 473-96-0117
PUC DOCKET NO. 15102

**APPLICATION OF GULF STATES
UTILITIES COMPANY TO
RECONCILE ITS FUEL COSTS, FOR
PERMISSION TO DELAY
REQUESTING A SURCHARGE, OR IN
THE ALTERNATIVE, FOR A
SURCHARGE TO RECOVER UNDER-
RECOVERED FUEL EXPENSE**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential by a party responding to discovery requests, unless the Administrative Law Judge (ALJ) or the Public Utility Commission of Texas (Commission or PUCT) finds that such information is not confidential.

1. (a) A party asserting confidentiality, or "highly sensitive" confidentiality shall at the time the confidentiality is claimed identify the basis for such assertion

(b) Any party producing or filing a document, including, but not limited to, records stored or encoded on a computer disk or other similar electronic storage medium, in this proceeding may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED MATERIALS PURSUANT TO PROTECTIVE ORDER ISSUED IN SOAH DOCKET NO. 473-96-0117 AND PUC DOCKET NO 15102" or "CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER ISSUED IN SOAH DOCKET NO. 473-96-0117 AND PUC DOCKET NO. 15102" or words to this effect (hereinafter referred to as Protected Materials).

(c) However, Protected Materials shall not include any information or document contained in the public files of the Commission, the Federal Energy Regulatory Commission (FERC) or any other federal or state agency, court or local governmental authority subject to the Public

Information Act. "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. For the purposes of this Protective Order, a "Reviewing Party" is a party to Public Utility Commission of Texas Docket No. 15102 and SOAH Docket No. 473-96-0117, including the General Counsel and the Commission Staff.

3. (a) (1) Except as otherwise provided in this Protective Order, a Reviewing Party shall be permitted access to "Protected Materials" only through its "Reviewing Representatives." Reviewing Representatives of a Reviewing 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 Reviewing Party and directly engaged in these proceedings. At the request of the PUCT Commissioners or their Staff, copies of Protected Materials may be produced by the General Counsel's Office to the Commissioners. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order, with the intention that those persons observe the restrictions of the Protective Order during their consideration and deliberation on Docket No. 15102.

(2) The term "Highly Sensitive Protective Materials" is a subset of "Protected Materials" and refers to documents or information which a responding party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents or information to employees of the Reviewing Party would expose the responding party to an unreasonable risk of harm. Documents or information so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS" or words to this effect. The provisions of this Protective Order pertaining to Highly Sensitive Protected Materials supersede any and all contrary provisions pertaining to Protected Materials.

(3) No copies shall be made of any "Highly Sensitive Protected Materials" and they shall be made available for inspection only at the locations specified in Paragraphs 6(a)(2) and (3). Limited handwritten notes may be made of Highly Sensitive Protected Materials which are restricted to a description of the document and a general characterization of its subject matter but may not contain any substantive information contained in such Highly Sensitive Protected Materials.

(4) With the exception of General Counsel and the Office of Public Utility Counsel (OPC), the Reviewing Representatives for the purposes of access to Highly Sensitive Protected Materials may be persons who are (i) counsel for the Reviewing Party, or (ii) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel. Reviewing Representatives for General Counsel and the Office of Public Utility Counsel for the purposes of access to Highly Sensitive Protected Materials shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.

(b) (1) In recognition of the unique positions of General Counsel and OPC, and to facilitate the performance of statutory responsibilities assigned to those parties, the procedures set forth in this Paragraph 3(b)(1)-(5) apply when General Counsel or OPC requests documents or information that the responding party designates as "Highly Sensitive Protected Materials." To the extent the requirements of this subparagraph conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of this subparagraph shall control.

(2) When, in response to any discovery request, a party makes available for review documents or information claimed to be "Highly Sensitive Protected Materials," that party shall also deliver one copy of the "Highly Sensitive Protected Materials" to the offices of both General Counsel and OPC in Austin. Unless otherwise ordered or agreed, such copies shall be delivered the same date that the response(s) to the discovery request(s) would be available for inspection by the

requesting party. General Counsel and OPC need not specifically request production of "Highly Sensitive Protected Materials."

(3) The General Counsel and the OPC's counsel may deliver the "Highly Sensitive Protected Materials" to the appropriate members of their respective staffs and outside consultants for review, provided such staff members and outside consultants first sign the certification set out in Paragraph 4.

(4) The General Counsel and OPC may not make additional copies of the "Highly Sensitive Protected Materials" unless the parties agree in writing otherwise, or, upon a showing of good cause, the Presiding Officer directs otherwise.¹ Limited handwritten notes may be made of "Highly Sensitive Protected Materials" by the General Counsel and OPC and all such handwritten notes will be treated as "Highly Sensitive Protected Materials" as are the materials from which the notes are taken.

(5) In the event of a request for any of the "Highly Sensitive Protected Materials" under the Public Information Act, an authorized representative of the Commission or OPC may furnish a copy of the requested "Highly Sensitive Protected Materials" to the Attorney General together with a copy of this Protective Order after notifying the party who produced the "Highly Sensitive Protected Materials" that such documents are being furnished to the Attorney General

4. (a) Each person who inspects the Protected Materials shall, before such inspection, execute the Certification as set forth under Exhibit A, except counsel of record in this proceeding

¹ Presiding Officer as that term is used herein shall mean the hearings officer assigned to preside over this proceeding as set forth under the PUCT's rules, or the administrative law judge assigned to preside over this proceeding as permitted under Section 2003.047 of the Government Code and 1 TAC 155.5

(b) A copy of each signed certification shall be provided to counsel for the party asserting confidentiality. Except for Highly Sensitive Protected materials, any Reviewing Representative may disclose Protected Materials to any other person who is a Reviewing 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 the party asserting confidentiality, that certification shall be executed before any disclosure. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes or memoranda or other information derived from the protected materials shall be returned to the party on whose behalf that person was acting. 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 engaged in these proceedings.

5. Except for "Highly Sensitive Protected Materials" which cannot be copied and Protected Materials which are voluminous, the party asserting confidentiality shall provide a Reviewing Party one copy of the Protected Materials. A Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record as set forth under Exhibit B shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record. A Reviewing Party may take handwritten notes or derive other information from the Protected Materials provided in response to this Paragraph 5.

6. (a) Voluminous Protected Materials shall be produced in accordance with the procedures established by P.U.C. Proc. R. 22.144(h) between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). A party producing voluminous data less than eight linear feet shall notify the other parties of the precise address in Austin, Texas at which such data will be produced simultaneous with the production of such data.

(b) (1) The Protected Materials may be reviewed only during the "reviewing

period," which period shall commence upon issuance of this 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. If, following any appeal, the Commission conducts a remand proceeding, then the reviewing period is extended to the exhaustion of available appeals, or the running of the time for making such appeals, as provided by applicable law.

(2) Other than "Highly Sensitive Protected Materials," Reviewing Parties may take handwritten notes regarding the information contained in Protected Materials made available for inspection subject to the conditions provided for in Paragraph 6(a), provided, however, that before photographic or mechanical copies can be made, the Reviewing Party seeking photographic or mechanical copies must complete a request for copying or give written notice to the party asserting confidentiality identifying each piece of Protected Materials or portions thereof the Reviewing 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 Reviewing Party may make further copies of reproduced materials for use in this proceeding pursuant to this 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 the party asserting confidentiality with a copy of that record upon request. Only that information which is relevant to this proceeding may be extracted from and used in these Protected Materials.

7. (a) All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purpose of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation, (1) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these

proceedings, or (2) any business or competitive endeavor of whatever nature.

(b) The Protected Materials, as well as the Reviewing Party's notes, memoranda, or other information regarding, or derived from the Protected Materials, are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing 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 Reviewing Party except in accordance with provisions of this Protective Order. A Reviewing 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 Reviewing Party tenders for filing any written testimony, exhibit, brief, or other submission that quotes from Protected Materials or discloses the confidential content of Protected Materials, the confidential portion of such testimony, exhibit, brief, or other submission 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 Officer and served under seal to the counsel of record for the Reviewing Parties. The Presiding Officer may subsequently, on his/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) All Protected Materials filed with the Commission, the Presiding Officer, 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 Officer, the Commission, or the courts.

10. In the event that the Presiding Officer 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 three (3) full working days, unless otherwise ordered, from the latest of: (a) the date of receipt by the party asserting confidentiality of the Presiding Officer's decision, or (b) the date of a final and non-appealable Commission order denying an appeal filed within the three (3) full working day period from the Presiding Officer's order, or (c) approval of such order by operation of law following the filing of such an appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

11. (a) During the pendency of Docket No. 15102 at the PUCT, in the event that a Reviewing 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 Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials.

(b) In the event that the party asserting confidentiality wishes to contest such proposed disclosure or request for change in designation, that party shall file with the Commission its objection to such proposal, with supporting sworn affidavits, if any, and may file a request for a prehearing conference within five (5) working days after receiving such notice of proposed disclosure or request for change in designation. Failure of that party to file such an objection or request a prehearing conference within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Responses to such an objection, with supporting

affidavits, if any, shall be filed within five (5) working days after receipt of the objection. No later than the deadline for responses to such an objection, counsel for the party claiming confidentiality shall indicate by written filing that he or she has reviewed all portions of the materials in dispute and believes in good faith that they should be held to be confidential under current legal standards. By the same date, counsel for the party challenging such confidentiality shall indicate by written filing that he or she has reviewed all portions of the materials in dispute and believes in good faith that they should not be held to be confidential under current legal standards, or alternatively that the party claiming confidentiality for some reason did not allow such counsel to review such materials. If the party seeking to prevent disclosure wishes to submit the material in question for *in camera* inspection, it shall do so no later than five (5) working days after filing its objections to disclosure or request for a prehearing conference.

(c) If that party files an objection, the Presiding Officer will determine whether the proposed disclosure or change in designation is appropriate. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the Presiding Officer determines that such proposed disclosure or change in designation should be made, such determination may not be effective earlier than three (3) full working days following the receipt of the decision by the party asserting confidentiality unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such Presiding Officer's ruling. As long as the period for filing the pleadings described above for consideration by the Presiding Officer and for challenging the Presiding Officer's determination has not expired and while a challenge is pending, the protected materials shall maintain the confidential treatment and status provided for in this Protective Order.

(d) Any party electing to challenge, in the courts of this State, a Commission or Presiding Officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (i) the date of the unfavorable order or (ii) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is finally

overruled by operation of law, to obtain a favorable ruling in State District Court. Any party challenging a State District Court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a State Appeals Court. Finally, any party challenging a determination of a State Appeals Court allowing disclosure or a change in designation shall have an additional period of fifteen (15) days from the date of the order to obtain a favorable ruling from the State Supreme Court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the period an appeal of a Presiding Officer's order is pending before the Commission and during the periods for challenging the various orders referenced in this Paragraph 11(a)(4).

12. Nothing in this Protective Order shall be construed as precluding a party asserting confidentiality 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 Protected Materials from unauthorized disclosure.

14. Following the conclusion of these proceedings, as that term is defined in paragraph 6(b) of this Protective Order, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party pursuant to paragraphs 5 or 6(b) of this Protective Order, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel 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 Materials) that have not been so returned, if any, 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 Materials. Promptly following the conclusion of these proceedings, as that term is defined in Paragraph 6(b), counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2) copies of any filed testimony, brief, application for rehearing, hearing exhibit or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order beyond the conclusion of the proceedings as that term is defined in the Protective Order.

15. This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act, and any other applicable law, provided that parties subject to those acts will give the party asserting confidentiality notice, if possible under those acts, prior to disclosure pursuant to those acts.

16. (a) If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however that (1) prior to such release the Reviewing Party promptly notifies the party asserting confidentiality of such order within such time as to allow such party whose materials are sought to be released sufficient time to contest any release of the confidential information; and (2) the Reviewing Party shall use its best efforts to prevent such confidential information from being disclosed to the public.

(b) The term "best efforts" as used in the preceding paragraph requires that the Reviewing Party's attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a governmental or judicial body or written opinion of the Attorney General which was sought in compliance with Subchapter B, TEX. GOV'T. CODE ANN. § 552 (Vernon Supp. 1996) (Public Information Act). The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information

and that the Reviewing Party will either proceed under the provisions of Tex. Govt. Code Section 552.301, or intends to comply with the final governmental or court order.

(c) "Notification" in subsection (a) shall constitute written notice to the party asserting confidentiality at least ten (10) days prior to release; provided, however, if recipient receives a request for disclosure under the Public Information Act, recipient will notify the party asserting confidentiality within five (5) calendar days.

17. In the event of a breach of the provisions contained in this Protective Order, the party asserting confidentiality will not have an adequate remedy in money or damages, and accordingly, shall, in addition to any other available legal or equitable remedies, be entitled to an injunction against such breach without any requirement to post bond as a condition of such relief.

ACCEPTED:

BY: _____

Title

Date

ACCEPTED:

BY: _____

Title

Date

EXHIBIT A

DOCKET NO. 15102

CERTIFICATION

I certify my understanding that the Protected Materials which I have received are provided to me pursuant to the terms and restrictions of the Protective Order in Public Utility Commission of Texas Docket No. 15102, 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, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purpose of the proceeding in Docket No. 15102. Provided, however, if the information contained in the Protected Materials is obtained from independent sources, the understanding stated herein shall not apply.

Signature

Printed Name

Employer

Date

EXHIBIT B

Copies of the confidential information listed below have been provided pursuant to the Confidentiality Disclosure Agreement in Docket No 15102 to Authorized Representatives of _____ . These copies will remain in the custody of _____ at _____

Signature

Printed Name

Date

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State Office of Administrative Hearings



Steven L. Martin
Chief Administrative Law Judge

January 22, 1996

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FILING CLERK

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

RE: SOAH Docket No. 473-96-0117
PUC Docket No. 15102

APPLICATION OF GULF STATES UTILITIES COMPANY TO RECONCILE ITS FUEL COSTS, FOR PERMISSION TO DELAY REQUESTING SURCHARGE, OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-RECOVERED FUEL EXPENSE

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of Order No. 4 in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "L. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

/ib

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

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SOAH DOCKET NO. 473-96-0117
PUC DOCKET NO. 15102

APPLICATION OF GULF STATES
UTILITIES COMPANY TO
RECONCILE ITS FUEL COSTS, FOR
PERMISSION TO DELAY
REQUESTING A SURCHARGE, OR IN
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RECOVERED FUEL EXPENSE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

ORDER NO. 4
ORDER GRANTING IN PART MOTION FOR APPROVAL OF NOTICE

On January 18, 1996, Gulf States Utilities Company (GSU) filed a motion for approval of the notice filed in its December 7, 1995 application, with some modifications. This motion was discussed at the January 22, 1996 prehearing conference. The Cities, Office of Public Utility Counsel (OPC), and General Counsel would strike two passages where GSU describes the genesis of this filing and gives notice that the Company has appealed the Commission's decision in Docket No. 10894. The main rationale for deleting these passages is that their inclusion will confuse GSU customers. At the prehearing, the undersigned Administrative Law Judge (ALJ) indicated that she concurs with the Cities, OPC, and General Counsel, but may reconsider that decision. Upon reconsideration, the ALJ will now **GRANT IN PART** GSU's motion for approval of its proposed notice. GSU is ordered to strike passage No. 1. However, GSU shall retain passage No. 2 with the additional paragraph proposed in its January 18 motion. (GSU shall also add the language referencing SOAH in the last paragraph, as discussed at the prehearing conference.) With these changes, the ALJ finds that GSU's proposed notice substantially complies with P.U.C. SUBST. R. 23.23(b)(4).

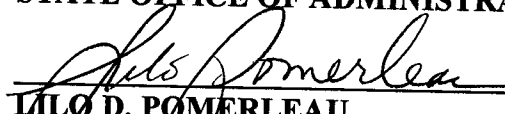
Concerning passage No. 2, GSU seeks to include that information in the event that an appeal is favorable to the Company in time to impact this proceeding. All agree that it is unknown whether the court will act before a final decision is rendered by the Commission in this proceeding. However, in weighing inclusion of the passage, and the opportunity to include any changes possibly ordered by the court, versus exclusion, and a more succinct notice, and, perhaps, one that is easier for a customer to understand, the ALJ finds less harm by including passage No. 2. The ALJ does not wish to

foreclose GSU from applying any changes resulting from the court's decision to fuel reconciliations in this proceeding, if that possibility arises.

The parties will be informed of this decision by telephone so that GSU is able to timely begin the process of notice.

SIGNED AT AUSTIN, TEXAS the 22nd day of January 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



LILLO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE

Book

State Office of Administrative Hearings



STEVEN L. MARTIN
Chief Administrative Law Judge

January 29, 1996

Ms. Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Blvd.
Austin, TX 78757

RE: SOAH Docket No. 473-96-0117
PUC Docket No. 15102

APPLICATION OF GULF STATES UTILITIES COMPANY TO RECONCILE ITS FUEL COSTS, FOR PERMISSION TO DELAY REQUESTING A SURCHARGE, OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-RECOVERED FUEL EXPENSE

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of Order No. 5 in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Lilo D. Pomerleau".

Lilo D. Pomerleau
Administrative Law Judge

/ib

One Capitol Square
Post Office Box 13025 ♦ 300 West 15th Street, Suite 502 ♦ Austin Texas 78711-3025
(512) 475-4993 Docket (512) 475-3445 Fax (512) 475-4994

SOAH DOCKET NO. 473-96-0117
PUC DOCKET NO. 15102

APPLICATION OF GULF STATES
UTILITIES COMPANY TO
RECONCILE ITS FUEL COSTS, FOR
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THE ALTERNATIVE, FOR A
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RECOVERED FUEL EXPENSE

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

FILED
JAN 21 PM 2:19
STATE OF TEXAS

ORDER NO. 5

MEMORIALIZING PREHEARING CONFERENCE
AND NOTICE OF SECOND PREHEARING CONFERENCE AND
HEARING ON THE MERITS

On January 22, 1996, the undersigned Administrative Law Judge (ALJ) convened the first prehearing conference in this proceeding. Appearances were entered by the following:

PARTIES	REPRESENTATIVES
Gulf States Utilities	Carolyn Shellman, Cecil Johnson, Paula Cyr
Cities of Groves, Port Neches, Nome, Vidor, Beaumont, China, Conroe	Barbara Day
State of Texas	Jason M. Wakefield
OPC	Marion Taylor Drew
TIEC	Carl S. Richie
North Star Steel Texas, Inc.	Philip Chavot
General Counsel	Michael Etchison

This Order sets out the adopted procedural schedule, discovery procedures, and date of hearing and reduces to writing the rulings made at the prehearing conference.

I. Pending Motions

A. Motions to Intervene

The ALJ granted motions to intervene by North Star Steel Texas, Inc., and the cities of Conroe (Cities). Pursuant to P.U.C. PROC. F

B. Motions to Compel

On January 2, 1996, the Cities filed a motion to respond to certain Requests for Information. The Cities reached an oral agreement concerning the response to compel GSU to respond to 1-22 and 1-23. The requested information on or before February

A second motion to compel was filed by GSU to respond to question 1-45 based on GSU's motion also involved GSU's response to question 1-45. The Protective Order, but now claims that the information is not additional restraints under the Protective Order. The information can only be viewed at GSU's offices under the terms of the request because GSU failed to closely guard the information. The parties are instructed *not to make copies* of

Relating to discovery in general, the ALJ has ruled on (to replies to responses). The parties shall not file additional motions and responses. If the ALJ needs additional information

II. Filing and Service Procedures

A. Filing

All pleadings required to be filed shall be filed with the Commission's filing clerk, not with the SOAH filing clerk. The Commission filing clerk will serve the filed pleadings on the SOAH ALJ. Pleadings requiring immediate action or needing the immediate attention of the SOAH ALJ should, in addition to being filed and served on all parties, be hand-delivered to SOAH, Docketing Division, Room 504.

The procedures regarding filing specified in Subchapter E of the Commission's procedural rules apply. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper number of legible copies are presented to the Commission filing clerk for filing. FAXING documents to the Commission *does not* constitute filing. P.U.C. PROC. R. 22.71(c).

The number of copies to be filed with the Commission are as follows.

- Exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the Commissioners 22 copies;
- testimony and briefs: 11 copies,
- discovery requests and responses seven copies; and
- other pleadings and documents. 12 copies

B. Service

Service of pleadings shall be governed by P U.C PROC R 22 74 All mail sent to the parties by SOAH will be sent by first class mail, unless the party requests express mailing and provides an

express mail account number. Parties seeking to arrange express mailing should contact Ms Irene Bravenec (512) 936-0722. All parties desiring express mail or overnight courier service should provide the account numbers to each party, including the SOAH ALJ.

All parties **SHALL** provide their current telephone and facsimile number, if available, to all other parties and to the Commission by filing and serving all parties with such numbers. Each party is responsible for providing the Commission and all parties with current address, telephone, and facsimile information if such information changes. The telephone and facsimile numbers will be placed on the service list for the convenience of the parties. Parties are responsible for updating their own service lists to reflect changed information and the addition or deletion of other parties, if any

Because of budgetary constraints, only one address per party will be included on the official service list maintained by SOAH. The parties may agree to serve more than one representative per party. Corrections to the service list should be directed to Ms Bravenec.

C. Filing Deadline Procedures

Filings at the Commission shall occur by 3:00 p m Central Standard Time on the date in question unless otherwise specified. P.U.C. PROC. R. 22.71(g) Parties are encouraged to engage in negotiations. The conduct of negotiations, however, does not relieve the parties of their obligation to meet filing deadlines. Failure to meet such deadlines may subject a party to sanctions specified in P.U.C. PROC. R. 22.161.

D. Assumptions Regarding Time of Receipt

To the extent it is necessary to make an assumption regarding the time of receipt of a document, the following guidelines shall apply. Under P.U.C. PROC. R. 22 74(b), service on a party by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed,

stamped and sealed, in a post office or official depository of the United States Postal Service. Service on a party by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier. Service on a party by facsimile transmission shall be complete upon actual receipt by the recipient's telecopier or facsimile transfer machine.

Under P.U.C. PROC. R. 22.74(c), a return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service.

1. Hand Delivery

If a document has been served in person or by agent, the ALJ will assume that the document was received on the date of filing.

2. Courier Receipted Delivery

If a document was served by courier receipted delivery, the ALJ will assume that the document was received no later than the day after filing.

3. Regular Mail, Certified Mail, Or Registered Mail

If a document has been sent by regular mail, certified mail, or registered mail, the ALJ will assume that it was received no later than three days after filing.

4. Facsimile Transmission

If a document is served by facsimile transmission before 3:00 p.m., on a work day, the ALJ will assume that the document was received on that day; otherwise, the ALJ will assume that the document was received on the next work day.

E. Motions for Continuance, Cancellation, or Extension of a Deadline

Motions for continuance shall be governed by the requirements of P.U.C. PROC. R. 22.79.