

The ALJ is not persuaded by the stated opposition to GSU's request and **GRANTS** GSU's request to file supplemental testimony. The Cities and OPC infer that GSU has had previous opportunity to supplement its application and should, therefore, be precluded from such action again. The Cities referenced GSU's earlier request to file supplemental testimony on March 29 and April 30 in response to the Commission's Preliminary Order, which requested GSU to identify the level of fuel savings accrued to Texas ratepayers during the reconciliation period. The ALJ found it prudent to allow GSU to address the issues that the Commission clearly indicated it wished addressed. Similarly, although not directly requested by the Commission in this proceeding, GSU is responding to the Commission's request to see information pertaining to transmission-related revenues and expenses. The Commission has indicated that such information is necessary in fuel cases filed under the Commission's rules. The parties in opposition to GSU's current request do not represent otherwise nor do they state that the information is not relevant. Moreover, they do not agree that it is proper rebuttal testimony. Because the Commission has indicated such information pertains to fuel cases, the ALJ finds it is efficient to obtain this information before the hearing to avoid remand, as ordered in Docket No. 15489.

**C. Extension of Procedural Schedule**

The Cities and OPC oppose GSU's proposed procedural schedule because (1) it is a delaying tactic; (2) the length of delay is unfair because it will allow other parties opportunity to file "rebuttal" testimony to the Cities' prefiled; and (3) if other parties wished to file such testimony, they had opportunity to do so.

General Counsel states there is no need to change the procedural schedule. He does not need additional time to review or, presumably, respond to the supplemental testimony. He also notes that Staff cannot easily rearrange their schedules to accommodate the delay.

Counsel for North Star indicates he has personal obligations from August 8 to August 22, 1996.

The ALJ is not persuaded that the procedural schedule was proposed for purposes of delay, that it will allow unfair "rebuttal" to the Cities' position, or that other parties should have addressed these issues earlier. Although General Counsel indicated some conflict with Staff schedules, no party brought an specific conflicts to the ALJ attention, except for North Star. Although a more expedited schedule leading to hearing is possible, the ALJ agrees to the schedule proposed by GSU because it was the only alternative presented (other than rejection of GSU's motions) and does not conflict with North Star's schedule. Finally, the ALJ notes that no party has argued that the ratepayers are harmed by the delay in this proceeding. At the hearing, GSU will likely be required to work with the conflicts of other parties' witnesses. Accordingly, GSU's proposed procedural schedule, which is attached to this Order, is **ADOPTED**.

### **III. Notice of Rescheduled Hearing on the Merits**


The hearing on the merits scheduled for July 31, 1996 is **RESCHEDULED** to 9 00 a m , August 26, 1996 at the Commission's offices.

**IV. Cancellation of July 22, 1996 Hearing**

The hearing scheduled in Order No. 16 for the limited purpose of determining declassification of documents is cancelled and will be rescheduled in a future order. At this time, the ALJ is unable to confirm with the Commission's Legal Administration the availability of a hearing room and will not set a date closer to the date of the hearing on the merits without such confirmation.

SIGNED AT AUSTIN, TEXAS the 16<sup>th</sup> day of July 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
LILLO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE

Rec'd  
State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

July 24, 1996

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96 JUL 25 PM 1:22

PUBLIC UTILITY COMMISSION  
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 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. 22, **Ruling on North Star Steel Motion to Compel**, 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 Pomerleaus /ib".

Lilo D. Pomerleaus  
Administrative Law Judge

/ib

William P. Clements Building  
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

648

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

RECEIVED

96 JUL 25 PM 1:22

PUBLIC UTILITY COMMISSION  
FILING CLERK

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. 22

RULING ON NORTH STAR STEEL  
MOTION TO COMPEL

On June 27, 1996, North Star Steel Texas, Inc (North Star) filed a motion to compel Gulf States Utilities Company (GSU) to respond to the following request, NS 2-1<sup>1</sup>

[P]rovide GSU's monthly MSS-2 payments and receipts during the Reconciliation Period. Include in your response all workpapers, including without limitation all data of GSU, Entergy, and/or the Entergy Operating Companies, used in the calculation of MSS-2 payments and receipts.

GSU filed a response on July 5, 1996. According to GSU, schedule MSS-2 of the Entergy System Agreement contains transmission equalization charges ordered by the Federal Energy Regulatory Commission (FERC). That agreement governs the operating relationship among the Entergy companies and the economic dispatch on a system basis of the generating units owned by each operating company. In its motion, North Star includes another GSU definition of the MSS-2 payments:

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<sup>1</sup>As clarified by North Star in its footnote, NS 2-1 is essentially the same request for information (RFI) as NS 1-18. Consequently, both parties in this dispute incorporate the arguments made in the pleadings relating to NS 1-18

Service Schedule MSS-2 of the Entergy System Agreement provides the basis for equalizing among the Entergy Operating Companies, the ownership costs associated with Inter-Transmission Investment. Each company bears a portion of the ownership costs of transmission investment in proportion to its contribution to the Entergy System's monthly peak load . . . referred to as the company's "Responsibility Ratio." GSU response to North Star's motion to compel NS 1-18 (June 16, 1996).

North Star argues that the MSS-2 contributions are not simple charges or payments, but are dependent on the data of other operating companies. Thus, it is "impossible to provide a complete response of the information utilized in calculating GSU's MSS-2 payments without providing data on the other Entergy operating companies." North Star June 27 motion to compel at 2. The Administrative Law Judge (ALJ) interprets this to mean North Star requests the data from other Entergy Operating Companies, which is used in calculating the MSS-2 payments.

GSU objects to providing the *workpapers* that include data from Entergy's other operating companies, arguing that it is irrelevant to the determination of the reasonableness of GSU's payments under MSS-2.<sup>2</sup> According to the affidavit of Mr. Charles Freeman, the calculation of MSS-2 payments is not based on the MSS-2 charges or receipts of the other Entergy operating companies. Mr. Freeman gives the formula for calculating the MSS-2 payments, stating that necessary information for that calculation is: (a) GSU's responsibility ratio (GSU's share of the Entergy system monthly peak load); (b) Entergy system's net inter-transmission investment; (c) GSU's net inter-transmission investment; and (d) the Entergy system's average annual ownership cost. Thus, argues GSU, the calculation is made with GSU-specific data and system-wide data. The responsibility ratios of the other Entergy operating companies are not necessary for this calculation.

GSU contends that amounts paid or received by other Entergy operating companies pursuant to MSS-2 are irrelevant to matters over which the Commission has jurisdiction. Regarding this

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<sup>2</sup>GSU also objects to providing a response claiming that this information is confidential. As such, any provision of the information would be provided under the protective order.

dispute, the Commission may not challenge the expenses allocated to GSU for power generated by another company when GSU acquires that power through system dispatch. According to GSU's argument, the expenses allocated to GSU for that power are based on the System Agreement and regulated by the FERC.

Based on the pleadings associated with NS 2-1 and 1-18, the ALJ finds that the requested workpapers are not relevant to the subject matter of this proceeding. GSU explained in its affidavit that the calculations did not rely on information provided by other Entergy operating companies. This negates North Star's argument that the workpapers of other Entergy operating companies are used in the calculation of GSU's monthly MSS-2 payments and receipts. Once GSU made that showing, the ALJ is persuaded by the cited case law that the FERC not the Commission has jurisdiction.<sup>3</sup> See also Order No. 17. North Star presented no argument indicating otherwise. Instead, GSU affirmed that the Entergy System Agreement is a FERC-approved agreement governing the operating relationship among the Entergy system companies. This proceeding will not change the allocation found in that agreement. Accordingly, North Star's motion to compel GSU to respond to NS 2-1 is **DENIED**.

SIGNED AT AUSTIN, TEXAS the 24<sup>th</sup> day of July 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
LEO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE

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<sup>3</sup>As noted by GSU, the U.S. Supreme Court has held that state regulatory agencies may not alter FERC-ordered allocations *Mississippi Power & Light v. Mississippi Comm.*, 108 S.Ct.2428 (1988). Moreover, once the FERC sets a wholesale rate, state commissions may not find those rates unreasonable when setting retail rates. *Nantahala Power & Light v. Thornburg*, 106 S Ct 2349(1986)(under "filed-rate doctrine," interstate rates must be given binding effect in determining intrastate rates)

State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

July 24, 1996

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PUBLIC UTILITY COMMISSION  
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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 23, **Order Ruling on Cities' Motion to Declassify Certain Information Provided Under Protective Order**, 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 "William Clay Harris".

William Clay Harris  
Administrative Law Judge

/ib

William P. Clements Building  
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

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PUBLIC UTILITY COMMISSION  
STATE OF FLORIDA

APPLICATION OF GULF STATES § BEFORE THE STATE OFFICE  
UTILITIES COMPANY TO RECONCILE §  
ITS FUEL COSTS, FOR PERMISSION TO § OF  
DELAY REQUESTING A SURCHARGE, §  
OR ALTERNATIVELY, FOR A § ADMINISTRATIVE HEARINGS  
SURCHARGE TO RECOVER §  
UNDER-RECOVERED FUEL EXPENSE §

ORDER NO. 23

ORDER RULING ON CITIES' MOTION TO DECLASSIFY  
CERTAIN INFORMATION PROVIDED UNDER PROTECTIVE ORDER

I. Introduction

On May 10, 1996, Cities filed a notice to disclose certain confidential information provided under the terms of the Protective Order by Entergy Gulf States Utilities Company (GSU) in response to Cities' RFI Nos. 11-11, 16-13, 21-1, 21-42, 25-6, 25-8, and WP/FR-15, pages 1, 2, and 5 of 8. GSU responded on May 17, 1996, by filing its Objection to Cities' Notice of Request for Change in Designation. In that response, GSU stated that it had determined to declassify its responses to Cities' RFI Nos. 11-11 and 21-1. In a further later response, GSU determined to declassify its responses to Cities' RFI Nos. 16-13, 25-6, and 25-8. Consequently, the Administrative Law Judge (ALJ) will address only the requested declassification of the information provided in response to Cities' RFI Nos. 21-42 and WP/FR-15, pages 1, 2, and 5 of 8.

In this Order, the ALJ identifies the applicable standard for determining whether to declassify confidential information submitted under the Protective Order in effect in this docket, briefly discusses the nature of the information sought to be declassified and the Cities' reasons for declassification, and rules on the request to declassify based on an *in camera* inspection of the information, the pleadings, and the supporting affidavits filed by GSU. This Order is issued independently from the revised

schedule set forth by the ALJ in Order No. 16 for last minute protective order disputes before hearing.

## **II. Protective Order Standards and the Nature of the Information Involved**

### **A. Protective Order Standards for Trade Secrets and Information Subject to Protection from Public Disclosure.**

The ALJ assigned to this docket issued the Protective Order in this case on January 22, 1996. In the order adopting the Protective Order, the ALJ rejected the Cities' argument that a more restrictive definition of confidential and protected material should be included in the Protective Order, adopting instead a proposal by GSU to define protected materials as "any information considered to be confidential by law, either statutory, constitutional, or common law" Order No. 3 at 2. Cities had argued that the "highly sensitive confidential information" designation should be limited to trade secret information that could result in harm to GSU in *pending fuel litigation*, i.e., for a very restricted specified set of data. Thus, it should be pointed out that Cities' attempt to restrict or limit the definition of confidential information under the standard set forth in the Protective Order was rejected.

Under the Protective Order's broad definition of confidential information, trade secret information should not be disclosed publicly if its disclosure could result in an unreasonable risk of competitive harm to the utility when other relevant factors are balanced against the purpose stated for public disclosure. *Pennzoil Co. v. Federal Power Commission*, 534 F.2d 627, 632 (5th Cir. 1976) (adopting a balancing of the public and private interests and taking into consideration certain relevant factors in deciding whether disclosure should be ordered). In *Pennzoil*, the Fifth Circuit announced three factors that should be considered in making such a determination. (1) whether disclosure of this type of detailed information will significantly aid the Commission in fulfilling its functions, (2) consideration of not only the harm done to the producers by releasing the information, but the harm

to the public generally; and (3) most importantly, whether there are alternatives to full disclosure that will provide consumers with adequate knowledge to fully participate in the Commission's proceedings but at the same time protect the interests of the producers. 534 F.2d at 632. The Court in *Pennzoil* held that the Federal Power Commission abused its discretion in ordering the disclosure of detailed gas well reserve information that could be utilized by competitors in bidding on future leases, without considering the factors relevant to whether disclosure of the information served a legitimate regulatory function. 534 F.2d at 632.

GSU argues that the standard for maintaining the confidentiality of the information in dispute is not limited solely to information that meets the strict definition of a trade secret, but also includes non-trade secret information deemed confidential by law. GSU argues that this standard is "whether the information is proprietary and subject to having its value or substance expropriated, quite apart from its legitimate use in connection with regulatory matters." The ALJ tends to agree. The ALJ assigned to this case has previously adopted a Restatement of Torts, 2d definition of trade secrets. GSU based its response largely on those factors. The ALJ adopts the same standard which is not inconsistent with *Pennzoil*. The ALJ believes the balancing test set forth in *Pennzoil* is reasonable in resolving this disclosure dispute, considering the factors announced there relevant to resolving this dispute.

**B. Nature of the Information Cities Request that GSU be Ordered to Publicly Disclose and the Reasons for Disclosure.**

Cities' RFI Nos. 21-42 and WP/FR-15 are the only documents at issue here and they consist of fossil fuel price indices used in each of GSU's long-term contracts to adjust costs, including maximum and minimum quantities by customer and a monthly breakout of gas transportation fees. The information is sensitive and confidential within GSU because if it were disclosed publicly, the information could obviously be useful to competitors in gaining information about its long-term contracts. If a GSU rival or competitor had access to such information including price indices and

gas transportation fees, the information could be used to GSU's disadvantage to negotiate more favorable contracts with the supplier or transporter, thereby increasing costs on GSU's long-term contracts. The long-term contracts could arguably have to be renegotiated with a different supplier or the same supplier at a higher price. This is one reason the information Cities request to be disclosed publicly is disclosed only within GSU and then only as a confidential trade secret. The main reason given by Cities for its disclosure request is that the Cities should be allowed to conduct cross-examination utilizing the information at the hearing.

### **III. Results of In Camera Review and Order Ruling on Notice to Declassify**

The ALJ has reviewed *in camera* the information sought to be declassified and disclosed publicly by Cities, at GSU's request. The ALJ finds that GSU sufficiently substantiated the trade secret and confidential nature of the information. The need for public disclosure of the information is outweighed by the harm that could be done to GSU and its ratepayers if the information were to fall into the hands of competitors on long-term fossil fuel contracts. The ALJ finds that both the Restatement of Torts, 2d, factors, as well as the *Pennzoil* criteria are the proper standards and that under those standards, the information in Cities RFI No. 21-42 and WP/FR-15 should not be publicly disclosed.

First, disclosure of this information will not significantly aid the Commission in the fulfillment of its function, i. e., to reconcile GSU's fuel costs. The information responsive to Cities RFI No. 21-42 and WP/FR-15 has already been given to the Cities during discovery under the terms of the protective order. The ALJ is confident that the Cities can frame questions to effectively cross-examine witnesses.

Second, the ALJ believes that the potential harm done to the utility as well as to the public generally if the requested information were declassified weighs heavily in GSU's favor. If another competitor utility gained access to confidential fossil fuel price indices for GSU's long-term contracts

they could bid the supplier away from GSU thereby causing harm to GSU and to GSU's ratepayers because the contracts would have to be re-negotiated at presumably higher prices. This would cause fuel costs to increase and ratepayers and the public generally would suffer because rates could increase.

Third, there are alternatives to full disclosure that will allow full participation in the Commission's proceedings but at the same time protect the interests of the utility and ratepayers. The Cities can frame their questions on cross-examination in such a way that the indices do not have to be disclosed. The Cities can hire an expert to evaluate the indices and express his or her opinion in the form of testimony at the hearing. The ALJ believes that there are alternatives to public disclosure. Accordingly, Cities' motion to declassify is hereby **DENIED**.

SIGNED AT AUSTIN, TEXAS the 23<sup>rd</sup> day of July 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William Clay Harris  
WILLIAM CLAY HARRIS  
ADMINISTRATIVE LAW JUDGE

State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

July 29, 1996

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96 JUL 30 AM 9:10  
PUBLIC UTILITY COMMISSION  
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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. 24, Ruling on Cities' Motion to Compel No. 40-20**, in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Lilo D. Pomerleau*  
Lilo D. Pomerleau  
Administrative Law Judge

/ib

William P. Clements Building  
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

65A

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

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

ORDER NO. 24

RULING ON CITIES' MOTION TO COMPEL NO. 40-20

On July 12, 1996, Cities filed a motion to compel Gulf States Utilities Company (GSU) to respond to the following request, No. 40-20:

Show the forecast transmission equalization charge or credit for each Entergy operating company in 1994 and through June 30, 1995.

The Cities argue that the transmission equalization payments GSU makes depends on the other Entergy operating companies' credits and payments and, to the extent that GSU makes payments, the other operating companies' payments constitute affiliate payments, which are discoverable. The Cities also argue that the transmission equalization payments GSU made during the reconciliation period are different from what, in the merger proceeding, GSU represented they would be.

GSU filed a response on July 19, 1996. It objects to the portion of the request that seeks information about Entergy's operating companies other than GSU because such data is irrelevant to the determination of GSU's payments under MSS-2.<sup>1</sup> Under federal law, GSU contends that the Commission has no jurisdiction to change the level of payments or credits charges under the FERC-

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<sup>1</sup> As GSU explains in Footnote No. 1 of its response, service schedule MSS-2 of the Entergy System Agreement provides the basis for equalizing through a formula the ownership costs for each operating company. The System Agreement is a FERC-approved agreement governing the operating relation ship among the Entergy system companies. Each company pays or receives each months transmission equalization payments based on a formula found in MSS-2.

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approved schedule.<sup>2</sup> In further support of its argument, GSU attached the affidavit of Mr Charles Freeman, which states that the calculation of MSS-2 payments made by GSU is not based on the charges or receipts of other Entergy operating companies. Therefore, the Cities does not need such data to verify the calculation of GSU's monthly MSS-2 payments. GSU argues that amounts received or paid by other Entergy operating companies under MSS-2 are irrelevant to matters in this proceeding or matters over which the Commission has jurisdiction.

GSU further argues that its forecast of these expenses has no bearing on the proper calculation of the charges or the amount actually incurred during the reconciliation period GSU states it provided an explanation of its estimated versus actual transmission equalization charges

The Administrative Law Judge (ALJ) finds that, to the extent Cities 40-20 requests information concerning transmission equalization charges of other Energy operating companies except GSU, it is irrelevant or not reasonably calculated to lead to the discovery of admissible evidence. GSU explained in its affidavit that the calculations did not rely on information provided by other Entergy operating companies. The ALJ is also persuaded by the cited case law that the FERC not the Commission has jurisdiction over the level of payments or credits charged under Schedule MSS-2. *See also* Order Nos. 17 and 22. Although the Cities claim these payments to and by affiliates are discoverable, it presented no proof. Instead, GSU affirmed that the Entergy System Agreement is a FERC-approved agreement governing the operating relationship among the Entergy system companies. This proceeding will not change the allocation found in that agreement

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<sup>2</sup>As noted by GSU, the U.S. Supreme Court has held that state regulatory agencies may not alter FERC-ordered allocations *Mississippi Power & Light v. Mississippi Comm.*, 108 S.Ct.2428 (1988). Moreover, once the FERC sets a wholesale rate, state commissions may not find those rates unreasonable when setting retail rates. *Nantahala Power & Light v. Thornburg*, 106 S Ct 2349 (1986)(under "filed-rate doctrine," interstate rates must be given binding effect in determining intrastate rates)



Accordingly, Cities' motion to compel GSU to respond to Cities' 40-20 is **DENIED**

SIGNED AT AUSTIN, TEXAS the 29<sup>th</sup> day of July 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
LILLO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

August 2, 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 25, **SCHEDULING AND NOTICE OF RESCHEDULED HEARING DATE**, 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 Pomerleau/is".

Lilo D. Pomerleau  
Administrative Law Judge

/ib

William P. Clements Building  
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

660

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

<b>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</b>	<b>§ § § § § § § §</b>	<b>BEFORE THE STATE OFFICE  OF  ADMINISTRATIVE HEARINGS</b>
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**ORDER NO. 25**

**SCHEDULING  
AND NOTICE OF RESCHEDULED HEARING DATE**

In response to Order No. 21, which rescheduled the hearing on the merits in this case to begin on August 26 and continue through September 20, 1996, several parties have filed pleadings concerning scheduling conflicts and preferences. Similarly, the Administrative Law Judge (ALJ) has had a problems securing a hearing room. The Legal Division of the Public Utility Commission of Texas (Commission) is unable to reserve a room for hearing on August 26 through 30, September 19, and September 23 through October 2, 1996.

On July 17, 1996, public counsel for the Office of Public Utility Counsel (OPC) indicated a conflict with the amended schedule because he is attorney of record for another PUC docket, which is scheduled to begin September 4, 1996. On July 25, 1996, General Counsel requested an extension of the hearing to September 9, 1996, to accommodate a three-day seminar scheduled to begin on August 26. General Counsel indicates that Texas Industrial Energy Consumers, North Star Steel Texas, Inc., and Gulf States Utilities Company (GSU) are agreeable to this date. He further states that the Cities do not support this change. Cities have not filed a response to this motion, therefore, the ALJ is unaware of any particular conflict for the Cities.

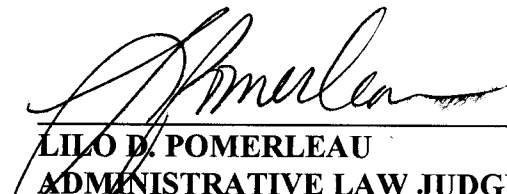
Because counsel for OPC did not inform the ALJ of his conflict before she issued Order No. 21, that conflict was not taken into account. The ALJ anticipates that OPC will work with its counsel to accommodate both PUC dockets going to hearing at approximately the same time.

The ALJ finds General Counsel's request to postpone the hearing date for one week reasonable, particularly in light of the fact that a PUC room is unavailable. While the Cities appear to object, they have not provided a specific cause for objection. (Other than the general inconvenience that the changes are undoubtedly causing for all parties involved.) Accordingly, General Counsel's request to modify the hearing date is **GRANTED**. The hearing on the merits scheduled for August 26, 1996 is **RESCHEDULED** to 9:00 a.m., September 9, 1996 at the Commission's offices, continuing day to day, depending on the availability of rooms or other notice from the ALJ.

Instead of scheduling a date for the hearing on classification of GSU documents, the ALJ is giving notice to the parties that she intends to schedule a hearing one day in the week of August 19, 1996. Any parties that wish to attend and have a conflict for that week shall notify the ALJ on or before August 6, 1996.<sup>1</sup> The ALJ will take any such conflicts plus room availability into account when scheduling a room. Once a room is secured, the ALJ will notify the parties by written order.

SIGNED AT AUSTIN, TEXAS the 2<sup>nd</sup> day of August 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
LILLO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE

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<sup>1</sup>Other than the classification of documents, no other substantive matters will be discussed at the one-day hearing. However it is likely that the ALJ will discuss procedural matters pertaining to the hearing, such as the estimated hearing length, the dates of hearing given room availability, possible alternatives, scheduling conflicts, and coordination with the PUC's move to downtown Austin on the week of September 23. Parties who do not plan to attend this meeting are encouraged to bring any scheduling conflicts to the ALJ's attention via written pleadings or, preferably, through other counsel that plan to attend

Book 111  
State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

August 7, 1996

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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. 26, Order Requiring Parties to Identify Scheduling Conflicts, 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

William P. Clements Building  
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

6665

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  
§

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6 AUG -8 AM 9:50  
PUBLIC UTILITY COMMISSION  
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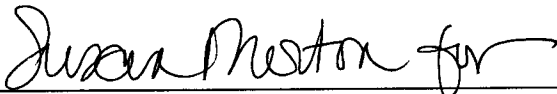
ORDER NO. 26

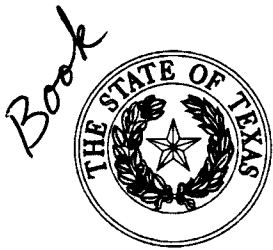
ORDER REQUIRING PARTIES TO IDENTIFY SCHEDULING CONFLICTS

On July 29, 1996, the ALJ issued Order No. 25 in this docket rescheduling the hearing on the merits to September 9, 1996 and notifying the parties that she intended to schedule a hearing on classification of GSU documents during the week of August 19, 1996. On August 6, 1996, Burlington Northern Railroad Company (BN) filed a response to that order indicating that it has a conflict during the week of August 19, 1996, and requests that the hearing on classification of GSU documents be scheduled during the week of August 26 through 30 or September 3 through 6. Also on that date, General Counsel filed a notice of conflict for August 20 through 22, 1996.

Any party who wishes to attend the hearing on classification of documents **SHALL** file a statement identifying what dates that party is **unavailable** for the hearing on classification of documents from August 15, 1996 through September 6, 1996. Such statement shall be filed at the PUC and faxed to the ALJ at SOAH at 936-0770 on or before noon, August 9, 1996.

SIGNED AT AUSTIN, TEXAS the 7<sup>th</sup> day of August 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
  
\_\_\_\_\_  
LILO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE



# Public Utility Commission of Texas

1701 N. Congress Avenue  
P. O. Box 13326  
Austin, Texas 78711-3326  
512 / 936-7000 • (Fax) 936-7003

Pat Wood, III  
Chairman

Robert W. Gee  
Commissioner

Judy Walsh  
Commissioner

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97 APR 30 AM 9:21  
PUBLIC UTILITY COMMISSION  
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**TO:** All Parties of Record

**FROM:** Kathleen S. Hamilton *KA/nh*  
Assistant Director of Legal Administration

**RE:** P.U.C. 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 to Recover Underrecovered Fuel Expense

**DATE:** April 29, 1997

The above referenced docket has been placed on the agenda of the May 6, 1997 Open Meeting. The Commissioners will consider the Merits of the Motions for Rehearing.

/nh



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POLICY DEVELOPMENT (512) 936-7200  
ADMINISTRATION (512) 936-7045  
CENTRAL RECORDS (512) 936-7180

EXECUTIVE DIRECTOR (512) 936-7040  
PUBLIC INFORMATION (512) 936-7140  
CONSUMER AFFAIRS (512) 936-7120  
HUMAN RESOURCES (512) 936-7060  
TTY (512) 936-7136

REGULATORY AFFAIRS (512) 936-7300  
COMMISSION SECRETARY (512) 936-7150  
INFORMATION SYSTEMS (512) 936-7090

File

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

June 28, 1996

RECEIVED  
96 JUL -1 PM 1:04  
PUBLIC UTILITY COMMISSION  
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 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. 19, EXTENDING INTERVENOR FILING DEADLINE, in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Lilo Pomerleau/is*

Lilo D. Pomerleau  
Administrative Law Judge

/ib

William P. Clements Building  
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

566



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

APPLICATION OF GULF STATES § BEFORE THE STATE OFFICE  
UTILITIES COMPANY TO RECONCILE §  
ITS FUEL COSTS, FOR PERMISSION TO § OF  
DELAY REQUESTING A SURCHARGE, §  
OR ALTERNATIVELY, FOR A § ADMINISTRATIVE HEARINGS  
SURCHARGE TO RECOVER §  
UNDER-RECOVERED FUEL EXPENSE §

96 JUL -1 PM 1:04  
PUBLIC UTILITY COMMISSION  
FILING CLERK

ORDER NO. 19

EXTENDING INTERVENOR FILING DEADLINE

On June 27, 1996, Gulf States Utilities Company (GSU) filed a motion requesting a one week extension of the filing deadlines for intervenor testimony, General Counsel's testimony, and GSU's rebuttal. Intervenor testimony is due June 28, 1996; General Counsel's testimony is due July 8, 1996; and GSU's rebuttal is due July 15, 1996. Because the administrative law judge (ALJ) assigned to this case is away from the office and will not return until Monday, July 1, 1996, only the filing deadline for intervenor testimony is being extended--and that deadline for only one working day. It is anticipated that ALJ Pomerleau will rule on the request for extension of the other deadlines on Monday, July 1, 1996. The undersigned ALJ hopes the fact the intervenors waited so long to request the extension means they have been prepared for an extension granted just before the filing deadline.

The deadline for filing intervenor testimony is **EXTENDED** from Friday, June 28, 1996, to Monday, July 1, 1996.

SIGNED AT AUSTIN, TEXAS the 28<sup>th</sup> day of June 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

*Elizabeth Hagan Drews for*  
LILLO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE

219  
Pail

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

RECEIVED  
96 DEC 23 AM 8:30  
FILING CLERK

December 20, 1996

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

**RE: SOAH DOCKET NO. 473-96-0117; PUC DOCKET NO. 15102**

***APPLICATION OF GULF STATES UTILITY COMPANY, INC., 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 under separate cover are the following documents in the above referenced proceeding:

**Box 1 of 3**

Transcripts of the Prehearing Conference (Jan. 22, 1996 & Feb. 23, 1996)  
Transcripts of the Hearing on the Merits (Volumes 1 - 19)

**Box 2 of 3**

**Original Exhibits of EGS Nos. 1** (including confidential workpapers), 1A, 2, 2A, 2A-1, 2B, 3 - 8, 8A, 9, 10 (plus a confidential page), 11- 14, 16 - 21, 21A, 22 - 33, 34A, 34B, 35 - 58, 59 (confidential), 59A, 60 - 67, 67A, 68 - 70, 70A, 71, 72 (confidential)

**Box 3 of 3**

**Original Exhibits of Cities Nos. 1 - 9, 11 35, 36 & 37** (confidential), 38 - 45, 46 & 47 (confidential), 48, 48A, 48B, 49 - 51, 52 & 53 (confidential), 54 - 61, 62 & 63 (confidential), 64 - 83, 83A (confidential), 84 (diskette for workpapers), 84A, 84B, 85 - 103

William P. Clements Building  
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

821

**Original Exhibits of GC Nos. 1 - 11, 11A, 12, 12A, 12B, 12C (confidential), 13, 13A, 13B (diskette), 14, 14A, 14B, 14C, 15, 15A, 15B, 15C, GC Judicial Notice (not marked, but admitted)**

**Original Exhibits of OPC Nos. 1 - 20, 20A, 21, 21A, 21B (confidential), 22 - 29**

**Original Exhibit of NS No. 1**

**Box 4 of 4**

**Confidential Exhibits**

**EGS -1 (7 - envelopes), EGS-10 (1 - envelope), EGS - 59, and EGS - 72**


**Cities - 36 (1 - envelope), 37 (1 - envelope), 46 (1 - envelope), 47 (1 - envelope), 52 (1 - envelope), 53 (1 - envelope), 62 (1 - envelope), 63 (1 - envelope) and 83A (1 - envelope)**

**GC - 12C (1 - envelope)**

**OPC - 21B (1 - envelope)**

Please return a file-stamped copy of this letter to SOAH for our records.

Thank you for your assistance.

Sincerely,  
  
William Clay Harris  
Administrative Law Judge

/ls

SOAH

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

August 16, 1996

RECEIVED  
96 AUG 19 AM 8:57  
PUBLIC UTILITY COMMISSION  
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 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. 27, Notice of Hearing Limited to Declassification Issues and Requiring Response from GSU Regarding Notice, in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Lilo Pomerleau /ib*

Lilo D. Pomerleau  
Administrative Law Judge

/ib

William P. Clements Building  
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

678

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. 27

NOTICE OF HEARING LIMITED TO DECLASSIFICATION ISSUES  
AND REQUIRING RESPONSE FROM GSU REGARDING NOTICE

*Notice of Hearing for Declassification of Certain Materials*

Based on the parties' notification of possible conflicts, the Administrative Law Judge (ALJ) has secured a room for the confidentiality hearing, which will convene at 9:00 a.m., Tuesday, September 3, 1996, at the Commission's offices, 7800 Shoal Creek Boulevard, Austin, Texas. The ALJ will limit substantive issues to pending notices to disclose information. The filed pleadings indicate that only the Office of Public Utility Counsel's (OPC) June 24 Notice to Disclose remains in dispute. Because Gulf States Utilities Company (GSU) and Burlington Northern Railroad Company have indicated that they met this week to discuss those issues, OPC **SHALL** file a statement on or before August 23, 1996, indicating which information remains in dispute.


*Notice*

GSU filed its proof of notice in this case on August 13, 1996. A review of both the summary of published notices and the publishers' affidavits indicate that notice of this proceeding was published for only one week in the *Jasper News-Boy* of Jasper County and the *Groesbeck Journal* of Limestone

County. On or before August 30, 1996, GSU **SHALL** file a statement explaining why there was only one week of publication in these newspapers.

SIGNED AT AUSTIN, TEXAS the 16<sup>th</sup> day of August 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



---

LILLO D. POMERLEAU  
ADMINISTRATIVE LAW JUDGE

2000  
State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

August 28, 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. 28** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*William Clay Harris /ls*

William Clay Harris  
Administrative Law Judge

/ls

William P. Clements Building  
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

720

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

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

ORDER NO. 28

REASSIGNMENT OF ADMINISTRATIVE LAW JUDGE;  
CANCELLATION OF HEARING LIMITED TO DECLASSIFICATION ISSUES;  
AND GOOD CAUSE EXTENSION OF DEADLINE

*Reassignment of Administrative Law Judge*

This case has been reassigned to Administrative Law Judge (ALJ) William Clay Harris, State Office of Administrative Hearings.

*Cancellation of Hearing for Declassification of Certain Materials*

On August 23, 1996, the Office of Public Utility Counsel (OPC) filed a letter stating that it had settled all disagreements regarding declassification of the documents listed in OPC's June 24, 1996 Notice to Disclose. Because the hearing, noticed for September 3, 1996, was limited to OPC's Notice to Disclose and no other declassification conflicts have been brought to the ALJ's attention, the September 3 declassification hearing is **CANCELED**.

As noticed in Order No. 25, the hearing on the merits in this case will begin at 9:00 a.m., September 9, 1996 at the Commission's offices, 7800 Shoal Creek Boulevard, Austin, Texas.



*Good Cause Extension*

In its July 5, 1996 motion for leave to file supplemental testimony, Gulf States Utilities Company (GSU) proposed to waive its right to a final order by December 8, 1996, if necessary. Order No. 21 granted GSU's motion, based on the Commission's order of remand requiring GSU to file similar data in *Application of Gulf States Utilities Company to Revise its Fixed Fuel Factors*, PUC Docket No. 15489. Order No. 21 also extended the procedural schedule and date of hearing, as requested by GSU. Based on GSU's waiver and because the hearing on the merits will begin September 9, 1996, pursuant to P.U.C. SUBST. R. 23.2, the ALJ finds good cause exists to extend the deadline found in P.U.C. SUBST. R. 23.23(b)(3)(D)<sup>1</sup> for the Commission to issue a final order. The deadline **IS EXTENDED** to allow the State Office of Administrative Hearings and the Commission an adequate amount of time to process this case.

SIGNED AT AUSTIN, TEXAS the 28<sup>th</sup> day of August 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William Clay Harris  
WILLIAM CLAY HARRIS  
ADMINISTRATIVE LAW JUDGE

---

<sup>1</sup>Under the Commission's old substantive rule, effective June 22, 1995.

State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

September 4, 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, AND 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. 29** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*William Clay Harris /ls*

William Clay Harris  
Administrative Law Judge

/ls

William P. Clements Building  
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

me

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

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

ORDER NO. 29

RULING ON SUFFICIENCY OF NOTICE AND  
GRANTING REQUESTS TO SHORTEN RESPONSE TIME

I. Introduction

On August 30, 1996, Entergy-Gulf States Utilities Company (GSU or the Company) filed a statement concerning sufficiency of notice in response to Order No. 27. Order No. 27 required GSU to explain an apparent failure to publish notice of its application for two consecutive weeks in Limestone and Jasper Counties as required by P.U.C. SUBST. R. 23.23(b)(4)(A)(ii) (the Rule). The Rule requires that published notice be provided once a week for two consecutive weeks in the affected counties in a fuel reconciliation proceeding. It also requires individual customer notice. GSU's response indicates that published notice was provided in Jasper County. However, due to the fact that the published notice in Limestone County was published only one week, GSU states that it will provide published notice once a week for two consecutive weeks the *Groesbeck Journal* beginning on September 4, 1996. GSU already published notice for one week in Limestone County, as well as provided direct customer notice of this proceeding via bill inserts. The issue, therefore, is whether notice of this proceeding is sufficient.

## II. Sufficiency of Notice

The Administrative Law Judge (ALJ) agrees with GSU that the lack of published notice for one week in Limestone County does not render the notice in this case insufficient, given the direct notice already provided to affected customers and persons via bill inserts. Notice was published for one week in Limestone County. The Rule requires publication for two consecutive weeks, as well as direct notice to potentially affected customers. GSU is publishing notice for the required period beginning on September 4, 1996. The ALJ hereby rules that notice is **SUFFICIENT**, provided the notice is published for two consecutive weeks in Limestone County in the *Groesbeck Journal* beginning on September 4, 1996, and that the appropriate corrected affidavits of published notice are filed as soon as possible thereafter. The ALJ therefore does not find it necessary to reach the issue of whether to grant an exception to the Rule.

## III. Granting Shortened Response Time on Requests for Admission

GSU also filed a request on August 30, 1996, to shorten the response time for Cities and OPC to respond to GSU's Requests for Admission from thirty to twenty days. Cities oppose such request and filed a response on the next day. OPC did not file any response. While the ALJ does not understand the reason GSU filed requests for admission so late in the schedule before the September 9, 1996, hearing on the merits, the ALJ believes that GSU's request has merit for several reasons. Although the requests for admission were filed somewhat late, the ALJ finds that the need for the information to be provided sufficiently in advance of the time it is to be used at the hearing outweighs any hardship required to respond within a shortened time-frame. Further, the ALJ understands GSU's request to require production of the information within 20 days, shortened from the usual 30 day response time, and believes that this is a reasonable time within which to respond.

Additionally, the ALJ notes from previous orders issued in this case that the discovery

---

conducted in this proceeding has not been engaged in by the parties in a manner calculated to serve as an example of how to conduct discovery efficiently and cooperatively in contested administrative proceedings. The pleadings in this docket are burdened with objections, disputes, disagreements, and motions to compel and responses thereto. The time for such disputes is past and the time for hearing is here. The ALJ would encourage all parties to conclude discovery in this case and to focus on the preparations necessary for the hearing. To that end, the request by GSU for a shortened response time is hereby **GRANTED**. Cities and OPC **SHALL** have 20 days to respond to GSU's requests. Further, Cities **SHALL** have the corresponding response time shortened for the questions on GSU's rebuttal as Cities requested in their response to GSU's motion to shorten response time.

SIGNED AT AUSTIN, TEXAS the 4<sup>th</sup> day of September 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William Clay Harris

WILLIAM CLAY HARRIS  
ADMINISTRATIVE LAW JUDGE

6001

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

October 14, 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, AND 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. 30** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*William Clay Harris /ls*  
William Clay Harris  
Administrative Law Judge

/ls

William P. Clements Building  
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

802

APPLICATION OF GULF STATES	§	BEFORE THE STATE OFFICE
UTILITY COMPANY, INC., TO	§	
RECONCILE ITS FUEL COSTS AND	§	
FOR PERMISSION TO DELAY	§	OF
REQUESTING A SURCHARGE, OR IN	§	
THE ALTERNATIVE, FOR A	§	
SURCHARGE TO RECOVER UNDER-	§	ADMINISTRATIVE HEARINGS
RECOVERED FUEL EXPENSE	§	

## ORDER NO. 30

**GRANTING MOTION FOR ADMINISTRATIVE NOTICE  
OF CERTAIN REGULATORY DECISIONS IN OTHER DOCKETS,  
AND ADMITTING CONFIDENTIAL COAL CONTRACTS; AND  
REQUESTING RESPONSES TO AGENCY INFORMATION SYSTEM FILING**

Cities' motion to take administrative notice of Louisiana Public Service Commission (LPSC) Order in Docket No. U-19904, Phase II Post-Merger Fuel Review of Entergy-Gulf States Inc., (GSU), filed on October 10, 1996, is hereby **GRANTED**. Additionally, the confidential coal contracts filed by GSU on the same date are hereby **ADMITTED** into the record. The information in the referenced dockets that GSU previously requested official notice of are also hereby officially **NOTICED**, with the copy of the unpublished report attached. While the Administrative Law Judge (ALJ) has received the information contained in the Agency Information System (AIS) filing system of the Public Utility Commission of Texas (Commission) in this docket, there have been no responses filed. The ALJ can only guess at the General Counsel's reasons for asking for its admission and at any party's response to the information being admitted into the record. The ALJ requests immediate responses to the offer. Such responses **SHALL** be filed no later than Friday, October 18, 1996.

SIGNED AT AUSTIN, TEXAS the 14<sup>th</sup> day of October 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

*William Clay Harris*

WILLIAM CLAY HARRIS  
ADMINISTRATIVE LAW JUDGE

*Geel*

**PUBLIC UTILITY COMMISSION OF TEXAS**

**Memorandum**

RECEIVED  
96 DEC 13 PM 3 53

**TO: All Parties of Record**

**FROM: Paula Mueller, Secretary** *Phy/le*  
**Public Utility Commission of Texas**

**DATE: December 19, 1996**

**RE: PUC Docket No. 15102; SOAH Docket No. 473-96-0117**  
**APPLICATION OF GULF STATES UTILITIES COMPANY, INC. 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**

Please be advised that the Proposal for Decision the above styled docket issued on December 18, 1996, will be considered by the Commissioners at the open meeting scheduled for 9:00 a.m. on February 5, 1997. The open meeting will be held at the Commission's offices, 1701 N. Congress Ave., Austin, Texas. The following schedule applies to this proceeding:

Deadline for Filing Exceptions  
to Proposal for Decision January 8, 1997

Deadline for Filing Responses to Exceptions January 22, 1997

An original and twenty-two (22) copies of exceptions and replies to exceptions must be filed with the Commission filing clerk and a copy must be served on all parties of record. The exceptions and replies **SHALL** follow the outline of the PFD. However, parties may include additional sections at the end. All filings must include both the SOAH docket number and the Commission docket number. Parties should include all grounds, legal and factual, in the exceptions and replies as appropriate; there is no provision for subsequent rounds of pleadings. **LATE FILED MATERIAL MAY NOT BE CONSIDERED.**

Your presence at the open meeting is not required, but you are welcome to attend. A copy of the signed order will be mailed to you shortly after the open meeting.

cc: Clay Harris, Administrative Law Judge  
State Office of Administrative Hearings

820



# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

FILED  
FEB 13 PM 1:47  
FILING CLERK

February 12, 1997

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, AND FOR PERMISSION TO DELAY REQUESTING A SURCHARGE,  
OR IN THE ALTERNATIVE, FOR A SURCHARGE TO RECOVER UNDER-  
RECOVERED FUEL EXPENSE***

Dear Ms. Mueller:

Enclosed are **public comment letters** filed in the above referenced docket. The Proposal for Decision was issued on December 18, 1996.

Please return a file-stamped copy of this letter to SOAH for our records. Thank you for your assistance.

Sincerely,

*Lisa Serrano*

Lisa Serrano  
Utility Division

William P. Clements Building  
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Boiler

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

October 15, 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, AND 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. 31** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*William Clay Harris /ls*  
William Clay Harris  
Administrative Law Judge

/ls

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

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

ORDER NO. 31

**ORDER CLARIFYING RULING IN ORDER NO. 30 AND**  
**DENYING MOTION OF COMMISSION'S GENERAL COUNSEL**  
**TO TAKE ADMINISTRATIVE NOTICE OF**  
**AGENCY INFORMATION SYSTEM FILINGS**

**I. Introduction**

With the conclusion of the hearing in this fuel proceeding, the parties have seized the opportunity to begin offering into evidence numerous exhibits by requesting official notice of them, contrary to the wishes of the Administrative Law Judge (ALJ) as stated on the record on October 8, 1996. In addition to seemingly unrelated orders of the Louisiana Public Service Commission (LPSC) involving Entergy-Gulf States, Inc (GSU) filed by Cities on October 10, 1996, the General Counsel of the Public Utility Commission of Texas (Commission) has filed a list of all agency information system filings of all pleadings on file with the PUC in this docket and has requested administrative notice be taken of the filing printout and accompanying computer diskettes, stating that everyone would need to obtain a 'widely available utility program' entitled PKUNZIP. It is not indicated how the information would be relevant to this proceeding or whether the information is disputed or within Tex. R. Civ. Ev. 201. Also, since the ALJ does not have anonymous file transfer protocol (FTP) capability, the ALJ cannot decompress the files on the diskettes to even review the data apart from the hard copies. Again, the ALJ is left to speculation, as are the other parties, as to the intended use of this 'data'. The purpose of this Order is to clarify

the ruling taking official notice of the LPSC order and to make a ruling on the General Counsel's motion to take official notice of the agency information filing system information

## II. Clarification of Order Taking Official Notice of an LPSC Order

On October 14, 1996, GSU filed objections to both Cities' and General Counsel's motions to take official notice of the LPSC order and the agency information filing system printouts. GSU requests that the LPSC order be noticed for the limited purpose of confirming whether the LPSC ordered a disallowance in connection with the Spindletop Gas Distribution System (SGDS) contract. Because the Cities did not sufficiently demonstrate the indisputability of the adjudicative facts requested to be noticed or the relevance of the order, the objection of GSU to narrow the scope of the matters officially noticed is hereby **GRANTED**.

The ALJ finds that the facts of the LPSC order are adjudicative but were not shown to be not reasonably subject to dispute. As to the portions of the LPSC order which may be subject to dispute, the ALJ believes that the limited admission and notice of such information as requested by GSU cures any disputability on the order. Therefore, the LPSC order is officially noticed for purposes of this record only for the limited purpose of confirming whether the LPSC ordered a disallowance in connection with the Spindletop Gas Distribution System (SGDS) contract. Additionally, the ALJ is still of the opinion that the proceedings of the LPSC just don't carry much weight in Texas.

Tex. R. Civ. Ev. 201 governs judicial notice. There are generally two types of facts subject to judicial notice in Texas: legislative and adjudicative. Adjudicative facts are those particular to the case. Goode, Wellborn, and Sharlot, *Courtroom Handbook on Texas Evidence* at 235, n. 1 (West 1996). The Rule governs only adjudicative facts. Tex. R. Civ. Ev. 201(a). Although Tex. R. Civ. Ev. 201 has been interpreted to be nondiscretionary where a request for official notice of adjudicative facts is made and the copies of the material are provided, to be subject to official notice, an adjudicative fact must still be shown to be "one not subject to reasonable dispute." Tex. R. Civ. Ev.

201(b); and Goode, Wellborn, and Sharlot, *Courtroom Handbook on Texas Evidence* at 235, n 1 (West 1996) ("For example, if a fact is adjudicative, it cannot be judicially noticed unless it is 'one not subject to reasonable dispute'"). Therefore, the matters requested to be officially noticed by Cities and General Counsel in this case are subject to Tex. R. Civ. Ev. 201 because they are adjudicative and must meet the requirements of the rule. They do not meet the requirements of the rule even though they are contained in the PUC agency filing system because they are still reasonably subject to dispute in the ALJ's opinion.

### III. Ruling on Agency Information Filing System Objection

The data printout of the agency information filing system, which the ALJ and parties must continue to speculate for a reason for the offer in the first place, the ALJ finds to be adjudicative facts particular to this case and therefore subject to the Rule. Because the ALJ further finds that the printout is not one that is not subject to reasonable dispute in this case as to its meaning, it is not appropriate for official notice under Tex. R. Civ. Ev. 201. GSU's objection to General Counsel's motion to take official notice is therefore hereby **SUSTAINED**, and the information is excluded. The ALJ finds that GSU's objection has stated the requirements of the Rule and has also correctly identified the problem with the disputability of the information.

The information, although adjudicative, must be not subject to reasonable dispute and the ALJ finds that reasonable minds could differ as to whether the information has any meaning apart from the date it was filed or what was entered as being filed. The ALJ finds that the information is simply not appropriate for administrative notice under the rule. Because such information is excluded from the record, the ALJ herewith returns the information to the Commission. The ALJ does not have access to PKUNZIP utility programs and could not decompress the information on the computer diskettes in any event. The parties are again urged to spend their time more wisely by writing the closing briefs in this case so that the Commission will have the benefit of all the arguments when it makes a final decision.

The ALJ believes that the time for offering exhibits in this case has passed and strongly discourages any further late-filed exhibits.

SIGNED AT AUSTIN, TEXAS the 15<sup>th</sup> day of October 1996.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

William Clay Harris

WILLIAM CLAY HARRIS  
ADMINISTRATIVE LAW JUDGE

Book



# Public Utility Commission of Texas

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Pat Wood, III  
Chairman

Robert W. Gee  
Commissioner

Judy Walsh  
Commissioner

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PUBLIC UTILITY COMMISSION  
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**TO:** All Parties of Record

**FROM:** Kathleen S. Hamilton *KH/nh*  
Assistant Director of Legal Administration

**RE:** P.U.C. 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 Underrecovered Fuel Expense

**DATE:** May 30, 1997

The above referenced docket has been placed on the agenda of the June 4, 1997 Open Meeting. The Commissioners will consider the Motion for Rehearing.

/nh



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*Beh*

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

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

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**ORDER**

On December 7, 1995, Entergy-Gulf States, Inc. (EGS or GSU)<sup>1</sup> filed an application requesting (1) approval of total fuel and purchased power costs of approximately \$318 million for the period from January 1, 1994, through June 30, 1995, (the reconciliation period), and (2) authorization to request, in a future proceeding, a surcharge for the purpose of collecting an estimated under-recovered fuel expense of \$22,375,752, plus interest and less any Commission-authorized disallowances and/or adjustments. In the alternative, EGS proposed to impose a surcharge over a 12-month period in this proceeding for the purpose of collecting its under-recovered fuel expenses, as determined by the Commission. In a letter filed January 23, 1997, EGS states that "in order to minimize the rate impact on its customers, the Company is willing to surcharge over a three or four month period, at the Commission's discretion."

The Proposal for Decision (PFD) issued by the administrative law judge (ALJ), containing findings of fact and conclusions of law, is adopted and incorporated into this Order, except to the extent specified by this Order or inconsistent with this Order.

In this Order, the Commission clarifies several general issues addressed in the PFD, and discusses the reasoning that underlies the Commission's determinations in the instances that its

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<sup>1</sup> For clarity, all references to GSU in the proposed findings of fact and conclusions of law in the PFD have been changed to EGS in this Order.



findings and conclusions in this docket differ from those proposed in the PFD. Such differences include issues related to (1) the allocation of fuel cost disallowances to Texas retail non-fixed fuel factor customers; (2) EGS's short-term gas contracts; (3) several outages at River Bend, EGS's nuclear facility; (4) revenues from off-system sales; and (5) the surcharge methodology. Findings of fact and conclusions of law have been added, changed or deleted where appropriate to reflect the determinations of the Commission, followed by the Ordering Paragraphs of the Commission.

## **I. General Issues**

### **A. Application of the Prudence Standard**

The Commission initially observes that the PFD applied the traditional prudence standard in deciding whether EGS met the fuel reconciliation requirements of P.U.C. SUBST. R. 23.23(b)(3)(B):

The exercise of that judgment and the choosing of one of that select range of options which a reasonable utility manager would exercise or choose in the same or similar circumstances given the information or alternatives available at the point in time such judgment is exercised or option is chosen.

There may be more than one prudent option within the range available to a utility in any given context. Any choice within the select range of reasonable options is prudent, and the Commission should not substitute its judgment for that of the utility . . . . The reasonableness of an action or decision must be judged in light of the circumstances, information, and available options existing at the time, without benefit of hindsight.<sup>2</sup>

Because the Commission did not indicate by rule, case precedent, or preliminary order that a standard different from this would apply in this proceeding, the PFD properly cited the traditional prudence standard as the measure by which EGS's actions are judged in this docket.

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<sup>2</sup> Inquiry of the Public Utility Commission of Texas into the Prudence and Efficiency of the Planning and Management of the Construction of the South Texas Nuclear Project, Docket No. 6668, 16 P.U.C. BULL. 183, 483 (June 20, 1990); Petition of Southwestern Public Service Company for a Fuel Reconciliation, Docket No. 14174, \_\_ P.U.C. BULL. \_\_ (Jan. 5, 1996) (not published).

The Commission emphasizes, however, that any application of the prudence standard must take into account two related principles: (1) the regulation of utilities is a substitute for the forces of competition and, therefore, (2) utility actions and decisions should be analyzed relative to the actions and decisions that would be made under the same or similar circumstances in a competitive environment. These concepts are nothing new. In explaining the Commission's purpose, the Legislature noted that "[u]tilities are by definition monopolies . . . and the normal forces of competition that operate to regulate prices in a free enterprise society do not always operate, and that therefore, . . . utility rates, operations, and services are regulated by public agencies."<sup>3</sup> Given its role as a proxy for the normal forces of competition, the Commission believes that in assessing the prudence of a utility's actions and decisions, it must attempt, to some degree, to approximate the actions and decisions that would be made under the same or similar circumstances in a competitive environment. Only then can the Commission truly regulate in a manner that assures that the utility's rates, operations and services are just and reasonable to its consumers.

**B. Cost-of-Service Regulation and Application of the Prudence Standard**

In the discussion of the Forced Outage 94-01 in Section IX.C.2. of the PFD, the ALJ concludes that "under cost-of-service regulation, currently applicable to EGS, EGS's ratepayers should not bear the risk of costs not imprudently incurred which are associated with the outage (FO-94-01)."<sup>4</sup> Because the Commission is concerned that this statement may be improperly interpreted to restrict its authority in a cost-of-service regulatory environment, it is necessary to clarify this critical point.

The Commission notes there are forms of cost-of-service-based regulation that would result in a utility's absorption of costs even when those costs are not incurred as a result of the utility's imprudent conduct. For example, the implementation of performance-based regulation as a variation of traditional cost-of-service regulation would allocate risks among the utility's

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<sup>3</sup> PURA95 §2.001(a).

<sup>4</sup> PFD at 87.