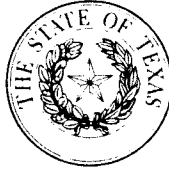


*Book*

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 4, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order Nos. 30 and 31** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Kathleen Sanford /ls*  
Kathleen Sanford  
Administrative Law Judge

/ls

SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705

APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
TO COMPETITION PLAN AND THE  
TARIFFS IMPLEMENTING THE PLAN,  
AND FOR THE AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
REVISED FUEL FACTORS, AND TO  
RECOVER A SURCHARGE FOR UNDER-  
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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

ORDER NO. 31

GRANTING DESTEC ENERGY, INC.'S MOTION  
TO INTERVENE IN PART AND ENRON CAPITAL & TRADE RESOURCES'  
REQUEST FOR RECONSIDERATION

Destec's Motion to Intervene

On January 15, 1997, Destec Energy, Inc. (Destec) filed a motion to intervene in the above-styled and docketed proceeding. Entergy Gulf States, Inc. (EGS) filed its response to Destec's motion on January 21, 1997. Destec responded to EGS's response on January 31, 1997.

The relevant Commission procedural rule states:

... A person has standing to intervene if that person:

(2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.

P.U.C. PROC. R. 22.103(b). Destec seeks party status as a supplier, potential competitor, and customer of EGS. Destec states that it owns and operates qualifying cogeneration facilities (QFs) from which power has been or is being sold and may be sold to EGS. These QFs also purchase services from EGS. Destec also asserts that its power marketing affiliate, Destec Power Services, Inc. (DPS), has entered into transmission agreements with utilities that will position Destec as a competitor of EGS. Destec asserts that it will require the full range of transmission and ancillary services offered by EGS. Destec alleges that it will be adversely affected competitively by the

proposed requirement that current EGS customers pay stranded investment surcharges and also claims that the proposed seven year moratorium on retail competition in EGS's service territory contravenes Destec's interest in competition.

EGS asserts that Destec does not precisely state a clear justiciable interest. The only interest that is clear involves wholesale transactions that are not affected by this proceeding and cannot form the basis for intervention. EGS alleges that Destec's claim does not establish Destec as a purchaser of services from EGS, nor does it state which services are purchased. EGS argues that the real basis for Destec's intervention is its claim that it would like to be a competitor for retail services.

ECT was granted intervention status in this proceeding based on the precedent established in *Application of Central Power and Light Company for Authority to Change Rates*, SOAH Docket No. 473-95-1563, PUC Docket No. 15965. Destec has also met that criterion. Destec has demonstrated that it could be affected by EGS's proposed transition-to-competition plan; therefore, it has satisfied the definition of affected person under PURA 95 § 1.003(1). Destec's motion and its response, however, only refer to issues that will be litigated in the Competitive Issues Phase; therefore, Destec's intervention will be limited to the Competitive Issues Phase. There is nothing in Destec's motion or its response that states a justiciable interest in the Fuel, Revenue Requirements, or Rate Design Phases of this case. Destec's petition to intervene is granted in part to allow it to participate only in the Competitive Issues Phase of this proceeding.

#### **ECT's Request for Reconsideration**

On January 27, 1997, Enron Capital & Trade Resources (ECT) filed a request for reconsideration of its motion to intervene. General Counsel responded to ECT's motion for reconsideration on February 3, 1997.

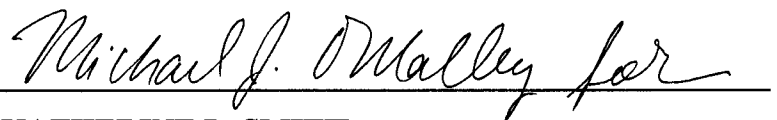
In Order No. 18, ECT was granted the right to intervene in only the Competitive Issues Phase of this proceeding, with the proviso that ECT could resubmit its petition if the Commission's

Preliminary Order indicated that competitive issues may be addressed in other phases of the proceeding. In its request for reconsideration, ECT asks that it be allowed to participate in the Cost Allocation and Rate Design Phase of this proceeding. ECT asserts that the Preliminary Order identifies several competitive issues to be addressed in the Cost Allocation and Rate Design Phase, such as the appropriate jurisdictional and interclass allocation methodologies for setting rates if a transition plan is approved and how EGS's rates should be designed if a transition plan is approved. ECT also bases its request on EGS's Preliminary Witness Sequence, which indicates that EGS intends to present testimony on unbundled rate design in Phase III. General Counsel states that the competitive issues that are included in the Cost Allocation and Rate Design Phase should be reclassified to the Competitive Issues Phase, and that ECT's motion for reconsideration should be held invalid.

Because the Commission's Preliminary Order identifies several competitive issues that will be considered in the Cost Allocation and Rate Design Phase of this proceeding (unbundling and interclass allocation methodologies if transition plan is approved), ECT's Request for Reconsideration is granted, and ECT may participate in the Cost Allocation and Rate Design Phase of this proceeding. General Counsel's suggestion to reclassify certain issues can be addressed at the February 12, 1997 prehearing conference. The issues, however, are currently within the Cost Allocation/Rate Design Phase, and ECT has demonstrated a justiciable interest in these issues and will be allowed to participate in the Cost Allocation/Rate Design Phase. If these issues are reclassified into the Competitive Issues Phase, the ALJs assume that ECT will no longer have an interest in the Cost Allocation/Rate Design Phase.

**SIGNED AT AUSTIN, TEXAS the 4th day of February 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

A handwritten signature in cursive script, reading "Michael J. O'Malley for", written over a horizontal line.

**KATHERINE L. SMITH**  
**ADMINISTRATIVE LAW JUDGE**

Book

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 6, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 32** 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 "Michael J. O'Malley".

Michael J. O'Malley  
Administrative Law Judge

/ls

SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705

APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
TO COMPETITION PLAN AND THE  
TARIFFS IMPLEMENTING THE PLAN,  
AND FOR THE AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

ORDER NO. 32  
GRANTING MOTION TO INTERVENE

On January 28, 1997, the City of Huntsville, Texas filed a motion to intervene. The city is a customer of EGS, its residents reside within the municipality served by EGS, and it has standing pursuant to PURA § 2.106. No party has objected to the intervention. Therefore, the ALJ GRANTS the intervention. This city SHALL be consolidated with the Cities of Beaumont, Bridge City, China, Conroe, Groves, Nederland, Nome, Orange, Pinehurst, Port Arthur, Port Neches, and Vidor, Texas, which have already been granted intervention, and all shall be designated "Cities."

SIGNED AT AUSTIN, TEXAS the 6th day of February 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

Book

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 12, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 33** 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 "Michael J. O'Malley".

Michael J. O'Malley  
Administrative Law Judge

/ls

**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

**APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
TO COMPETITION PLAN AND THE  
TARIFFS IMPLEMENTING THE PLAN,  
AND FOR THE AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

FILED  
FEB 13 1997  
PUBLIC UTILITY COMMISSION  
AUSTIN, TEXAS

**ORDER NO. 33  
GRANTING EGS' MOTION TO CONSOLIDATE  
PETITIONS FOR REVIEW**

On February 6, 1997, Entergy Gulf States, Inc. (EGS) filed petitions for review requesting the Public Utility Commission of Texas (PUC) to review the rate ordinances adopted by the municipalities of Midway, Normangee, North Cleveland, Plum Grove, and Todd Mission, Texas.

Contermporaneously, EGS filed a motion to consolidate the petitions for review with the above-referenced docket.

The PUC has appellate jurisdiction to review the municipal ordinances pursuant to Sections 2.101(d) and 2.108 of the Public Utility Regulatory Act of 1995 (PURA95), TEX. REV. CIV. STAT. ANN. art. 1446c-0 (Vernon Supp. 1997). The State Office of Administrative Hearings (SOAH) has jurisdiction to conduct a hearing and prepare a proposal for decision (PFD) pursuant to TEX. GOV'T. CODE ANN. § 2003.047(e)<sup>1</sup> and PURA95 § 1.101(e).

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<sup>1</sup> Text of section as added by Acts 1995, 74th Leg., ch. 765, § 1.35.



The Administrative Law Judge (ALJ) **GRANTS** the motion. These petitions will be consolidated with the above-referenced docket without the necessity of assignment of new docket numbers. Furthermore, EGS' motion to stay the effectiveness of the cities' ordinances pending the final disposition of this case is **GRANTED**.

SIGNED AT AUSTIN, TEXAS the 12<sup>th</sup> day of February 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

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# State Office of Administrative Hearings



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Shelia Bailey Taylor  
Chief Administrative Law Judge

PUBLIC UTILITY COMMISSION  
FILING CLERK

February 13, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 34** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael J. O'Malley* /ls

Michael J. O'Malley  
Administrative Law Judge

/ls

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SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705

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BEFORE THE STATE OFFICE

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OF

APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
TO COMPETITION PLAN AND THE  
TARIFFS IMPLEMENTING THE PLAN,  
AND FOR THE AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
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ADMINISTRATIVE HEARINGS

ORDER NO. 34  
MEMORIALIZING PREHEARING CONFERENCE  
AND  
SCHEDULING PREHEARING CONFERENCE

I. Rulings Made at Prehearing Conference

On February 12, 1997, a prehearing conference was held in the above-referenced docket. This Order memorializes the rulings made by the Administrative Law Judges (ALJs).

A. Motion to Dismiss

On January 21, 1997, North Star Steel (North Star) filed a motion to dismiss portions of the competitive issues phase of this docket. At the prehearing conference, the ALJs held that North Star's motion was moot because the Commission considered North Star's arguments prior to issuing the Preliminary Order. The Preliminary Order stated that the Commission should address the issues raised in EGS's application, and it did not dismiss any issues in the competitive issues phase. The Commission, however, recognized that new issues might arise from the legislative session. Therefore, after the legislative session, the ALJs will consider any motions to deal with the changes made during the legislative session.

### **B. Rate Case Expenses**

On Monday, March 3, 1997, Entergy Gulf States, Inc. (EGS) and Cities shall file a status report regarding rate case expenses. That report shall indicate whether and what kind of separate phase may be necessary to address those issues.

### **C. EGS's Motion for Continuance**

Because of new issues set forth in the Preliminary Order, EGS requested a 60-day continuance in the revenue requirement, rate design, and competitive issues phases. The parties could not reach an agreement on this issue at the prehearing conference. Therefore, on Tuesday, February 18, 1997, EGS shall file a pleading identifying which issues from the Preliminary Order it wants to address in supplemental testimony. On Thursday, February 27, 1997, the other parties may respond to EGS's request to supplement and motion for continuance.

### **D. Docket No. 15102**

General Counsel suggested that this docket should perhaps be delayed to consider the impact of the Commission's final Order in *Application of Gulf States Utility Company, Inc. to Reconcile its Fuel Costs, for Permission to Delay Requesting Surcharge, or in the Alternative, for a Surcharge to Recover Under-Recovered Fuel Expense*, PUC Docket No. 15102, SOAH Docket No. 473-96-0117. Once the Commission issues its final Order in Docket No. 15102, General Counsel shall file a pleading describing the impact of Docket No. 15102 on this docket and requesting a continuance if necessary. If General Counsel requests a continuance in the fuel phase, the parties shall have five working days to respond to that request.

### **E. Realignment of Issues**

General Counsel suggested that certain issues in the revenue requirement and rate design phases be moved to the competitive issues phase. On Tuesday, February 18, 1997, General Counsel shall identify which issues it believes need to be moved. Parties may respond to General Counsel's request by Thursday, February 27, 1997.

### **F. Witness Panels**

The ALJs had previously ruled that EGS witness panels would be allowed in this proceeding. At the prehearing conference, the following guidelines for witness panels, established in Docket No. 9300, Order No. 12, were adopted for this proceeding.

1. Each member of the panel shall be considered an individual witness for all purposes, except as otherwise directed by this order;
2. Counsel conducting cross-examination of a panel may direct questions to individual members or to the panel in general;
3. A member may not interject testimony, augment another member's response, or explain another member's testimony, except in response to a properly directed question on cross-examination or redirect examination. A member, however, may offer to respond to a question not specifically directed to him/her. It is within the questioner's discretion whether to allow such a response;
4. Members of a panel shall not communicate directly or indirectly (*e.g.*, body language) with each other during examination, except during a recess in the hearing; and
5. The scope of redirect examination of either an individual panel member or the panel as a whole shall be limited to the scope of cross-examination for the entire panel.

**G. Motion to Withdraw**

The ALJs granted Florida Gas Transmission Company's motion to withdraw.


**II. Scheduling Prehearing Conference**

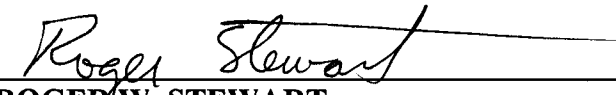
Notice is hereby given that a prehearing conference will be conducted in this docket, pursuant to the provisions of P.U.C. PROC. R. 22.121, at 9:00 a.m., Tuesday, February 25, 1997, at the Commission's offices in the William B. Travis Building, 7th Floor, 1701 North Congress Avenue, Austin, Texas. Matters to be considered at the prehearing conference include the following:

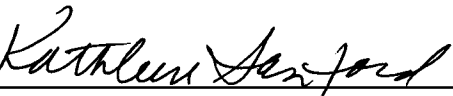
1. Discovery matters related to the Commission's ruling on the appeal of Order No. 17;
2. Other discovery matters; and
3. Any other matter appropriate to the efficient and fair disposition of this docket.

**SIGNED AT AUSTIN, TEXAS the 13<sup>th</sup> day of February 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

  
**MICHAEL J. O'MALLEY**  
**ADMINISTRATIVE LAW JUDGE**

  
**ROGER W. STEWART**  
**ADMINISTRATIVE LAW JUDGE**

  
**KATHLEEN SANFORD**  
**ADMINISTRATIVE LAW JUDGE**

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# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 14, 1997

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**Ms. Paula Mueller**  
**Secretary of the Commission**  
**Public Utility Commission of Texas**  
**1701 N. Congress Ave.**  
**Austin, TX 78701**

**RE: SOAH Docket No. 473-96-2285**  
**PUC Docket No. 16705**

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 35** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael J. O'Malley /ls*

Michael J. O'Malley  
Administrative Law Judge

/ls

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**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

**APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
PLAN AND THE TARIFFS IMPLEMENTING  
THE PLAN, AND FOR AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

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**ORDER NO. 35  
RFI RESPONSES**

The Cities, the Office of Public Utility Counsel (OPC), and the General Counsel advised the Administrative Law Judges (ALJs) at the prehearing conference in this docket on 12 February 1997 that Entergy Gulf States, Inc. (EGS) has been unusually slow in providing responses to Requests for Information (RFI). Some of the parties provided the ALJs with lists of outstanding RFI responses. All responses are due within 20 days of receipt of the request. *See* Order No. 4 at 6-7 and P.U.C. PROC. R. 22.144(c)(1). The procedural rule provides that on motion and for good cause shown, the presiding officer may extend or shorten the time for providing responses. The ALJs note that EGS has made no requests for extension of time in which to file responses. Whether such extension has been agreed to by the parties is unknown to the ALJs; however, because Cities, at least, and apparently also OPC have appealed to the Company, on a number of occasions, for the responses, it appears they have not agreed to extensions.

Upon reflection, and because of the number of responses that have not been supplied to parties (*See, e.g.*, letters from Cities dated February 5, February 5, February 7, and February 13 and memorandum from OPC dated February 10 and provided to the ALJs at the prehearing conference), the ALJs conclude that EGS is seriously violating the Commission's discovery rule and Order No. 4 in this docket. Therefore, EGS and Entergy Corporation shall provide *all* outstanding overdue discovery responses to the requesting parties immediately, and in any event, no later than Monday, 3 March 1997.



The ALJs also indicated to parties at the prehearing conference that they would not, at least at this time, *sua sponte* move for sanctions against the Company; however, the ALJs also look upon EGS's failure to timely respond to discovery requests as a serious offense, and would not hesitate, under the appropriate circumstances, to notice a sanctions hearing if the parties request that process. The discovery violations fall squarely within the four corners of the procedural rule. It states, in part, as follows:

**Causes for Imposition of Sanctions.** An administrative law judge, on the administrative law judge's own motion or on the motion of a party, after notice and an opportunity for hearing, may impose appropriate sanctions against a party or its representative for

- (2) abusing the discovery process in seeking, making or resisting discovery;
- (3) failing to obey an order of an administrative law judge or the Commission.

P.U.C. PROC. R. 22.161(b).

The ALJs would also note, from the discussion at the prehearing conference, that it appears attorneys for EGS are working diligently to comply with discovery procedures, and are not themselves, as representatives of the Company, responsible for the delays. In defense of their clients, counsel for EGS explained that Entergy Corporation is engaged in several regulatory rate proceedings at this time, that the number of RFIs has been greater in Texas than any other state, and that Entergy employees have a lot of work to do to get the responses out to the intervenors in this case. Nevertheless, Entergy Corporation and EGS have a legal responsibility to comply with the rules and orders governing the process of this case. They have not asked for good cause extensions to providing responses within time requirements. They are, indeed, currently in violation of the procedural rule and ALJ order and must bring themselves in compliance immediately so that other

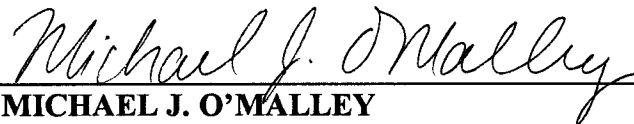
parties will receive the information they need to develop their own cases. Delays of this nature could impact the rights of such parties to their detriment, and this the ALJs will not tolerate.

SIGNED AT AUSTIN, TEXAS the 14<sup>th</sup> day of February 1997.

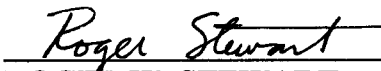
STATE OFFICE OF ADMINISTRATIVE HEARINGS



KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE



MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE



ROGER W. STEWART  
ADMINISTRATIVE LAW JUDGE

Book

# State Office of Administrative Hearings



FILED IN 1997-23

Shelia Bailey Taylor  
Chief Administrative Law Judge

February 21, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 36, Ruling on Cities Motion to Compel Its RFI No. 21-20 to Entergy Gulf States**, in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Kathleen Sanford* 16

Kathleen Sanford  
Administrative Law Judge

/s

**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

<b>APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL FACTORS, AND TO RECOVER A SURCHARGE FOR UNDERRECOVERED FUEL COSTS</b>	§ § § § § § §	<b>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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**ORDER NO. 36  
RULING ON CITIES MOTION TO COMPEL ITS  
RFI NO. 21-20 TO ENTERGY GULF STATES**

The Cities filed a motion to compel Entergy Gulf States (EGS) to respond to their Request for Information (RFI) No. 21-20. The Administrative Law Judge issues the following ruling:

**RFI No. 21-20: Affiliates. Provide copies of any documents other than testimony (i.e., reports, etc.) which Mr. Uffelman has prepared which concern affiliated transactions.**

EGS initially objected to this request (1) on the basis of relevance, (2) because the documents might be subject to confidentiality agreements between Deloitte & Touche and the parties for whom the reports were produced, which agreements forbid providing the documents to any other parties, including EGS, and (3) to the extent that the RFI requires production of documents subject to third party attorney-client or attorney work product privileges. EGS later withdrew the relevance objection and provided an index (listing one document) which it claims is privileged.

Cities claim they need the documents because they can be used to test the witness's credibility--his consistency of analysis, standards employed, approaches used, comparisons made, and conclusions drawn when evaluating other affiliate situations.

Two documents were prepared by Mr. Uffelman in his capacity as partner for Deloitte & Touche. Both are subject to confidentiality agreements, and one, EGS claims, is privileged. Notably, the reports are in draft form, and EGS explains in its response to the motion to compel that the reports may, at this time, contain factual inaccuracies about the respective utilities as a result of

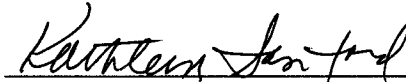
inadvertence or mistake by Deloitte & Touche. Mr. Uffelman stated in an affidavit attached to EGS' response, that he expects the United Water Report to become public information after it is in final form, and will supplement the response to Cities 21-20 at that time. No date was given. Furthermore, Mr. Uffelman agreed to seek release of the other report, claimed to be privileged under the lawyer-client privilege of the Texas Rules of Civil Evidence, Rules 503(a)(4) and 503(b). The relevant argument is that because Cities' only stated use of the data is for impeachment purposes at hearing, they have no immediate need for the reports at this time and will not be prejudiced by any delay.

In a different issue, Cities contend that EGS has waived its objection to this RFI because it did not file the objection on time. EGS explained its delay, that it has to file objections to nine separate sets of RFIs at the same time, including six sets from Cities and through inadvertence omitted the objection to this one. It did, however, object before motions to compel were due.

Based on Mr. Uffelman's representations in his affidavit, the motion to compel is denied at this time. EGS is ordered to produce the documents at such time as Mr. Uffelman is released from any claim of privilege and when the reports are completed. If release of the documents to Cities does not occur within a reasonable time before the revenue requirement hearing, EGS or Cities shall notify the ALJ of this problem and propose a resolution. With regard to Cities' late filing objection, the ALJ agrees that EGS was late; however, based on EGS' explanation in its Response to the Second Motion to Compel and on the ruling herein on the motion to compel, she finds good cause exists to permit the filing.

SIGNED AT AUSTIN, TEXAS the 21<sup>st</sup> day of February 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



KATHLEEN SANFORD

ADMINISTRATIVE LAW JUDGE

Boat

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

February 24, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 37** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Roger W. Stewart /ls*

Roger W. Stewart  
Administrative Law Judge

/ls

1002

**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

<b>APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL FACTORS, AND TO RECOVER A SURCHARGE FOR UNDERRECOVERED FUEL COSTS</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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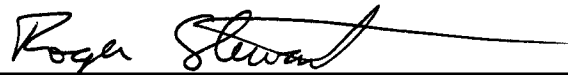
**ORDER NO. 37  
NARROWING SCOPE OF OBJECTIONS TO BE FILED**

In Order No. 4, the Administrative Law Judges (ALJs) directed parties to file any objections to the fuel phase direct evidence of Entergy Gulf States (EGS) by Friday, February 28, 1997. Order No. 4 at 10. On February 18, 1997, General Counsel filed a motion seeking continuance of the reconciliation aspect of the fuel phase on the basis that the Public Utility Commission of Texas (Commission) had not yet issued its final written order in EGS's most recent fuel reconciliation case, Docket No. 15102, but that the Commission's oral decision at its February 5, 1997 open meeting suggests that EGS will need to amend its fuel reconciliation schedules in this docket.

Because the time for responses to General Counsel's motion has not yet passed, the ALJs are not yet prepared to issue a ruling. In order to avoid the possibility of unnecessary or premature expenditure of the parties' resources, however, this ALJ is narrowing the scope of any February 28 objections to EGS's direct fuel phase evidence so as to exclude fuel reconciliation evidence and therefore include only fuel factor evidence. To the extent any of EGS's direct fuel phase evidence encompasses both fuel reconciliation and fuel factor issues, the objecting parties shall object by February 28 as to the fuel factor aspects of such evidence.

**SIGNED AT AUSTIN, TEXAS the 24th day of February 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



**ROGER W. STEWART  
ADMINISTRATIVE LAW JUDGE**

Boyle  
**State Office of Administrative Hearings**



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**Shelia Bailey Taylor**  
Chief Administrative Law Judge

**February 26, 1997**

**Ms. Paula Mueller**  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

**RE: SOAH Docket No. 473-96-2285**  
**PUC Docket No. 16705**

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 38** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Kathleen Sanford* /ls

Kathleen Sanford  
Administrative Law Judge

/ls



SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705

APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
PLAN AND THE TARIFFS IMPLEMENTING  
THE PLAN, AND FOR AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
REVISED FUEL FACTORS, AND  
TO RECOVER A SURCHARGE FOR  
UNDERRECOVERED FUEL COSTS

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BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

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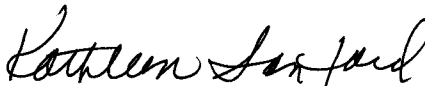
ORDER NO. 38  
RECONVENING PREHEARING CONFERENCE

The prehearing conference held on 25 February 1997 in this docket was recessed that day and will reconvene at **9:00 a.m. on 6 March 1997** at the Public Utility Commission of Texas (Commission) offices, 1701 North Congress, 7th Floor, Austin, Texas. The following matters will be considered at the March 6 conference:

1. Pending motions to compel then ripe for ruling;
2. The Commission's order in the Office of Public Utility Counsel appeal of Order Nos. 24 and 25 and its effect on pending discovery disputes;
3. The Commission's written order on the Cities' appeal of Order No. 17 and any resulting motions to reconsider discovery orders issued orally at the prehearing conference on February 25;
4. Status of EGS' responses to outstanding Requests for Information per Order No. 35; and
5. Any other matter necessary to the efficient and fair processing of this docket.

SIGNED AT AUSTIN, TEXAS the 26<sup>th</sup> day of February 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 4, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

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PUBLIC UTILITY COMMISSION

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 39** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael J. O'Malley /ls*

Michael J. O'Malley  
Administrative Law Judge

/ls

**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

**APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
TO COMPETITION PLAN AND THE  
TARIFFS IMPLEMENTING THE PLAN,  
AND FOR THE AUTHORITY TO  
RECONCILE FUEL COSTS, TO SET  
REVISED FUEL FACTORS, AND TO  
RECOVER A SURCHARGE FOR UNDER-  
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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**ORDER NO. 39  
GRANTING EGS' MOTION TO CONSOLIDATE  
PETITIONS FOR REVIEW**

On February 26, 1997, Entergy Gulf States, Inc. (EGS) filed petitions for review requesting the Public Utility Commission of Texas (PUC) to review the rate ordinances adopted by the municipalities of Anahuac and Oak Ridge North, Texas.

Contermoraneously, EGS filed a motion to consolidate the petitions for review with the above-referenced docket.

The PUC has appellate jurisdiction to review the municipal ordinances pursuant to Sections 2.101(d) and 2.108 of the Public Utility Regulatory Act of 1995 (PURA95), TEX. REV. CIV. STAT. ANN. art. 1446c-0 (Vernon Supp. 1997). The State Office of Administrative Hearings (SOAH) has jurisdiction to conduct a hearing and prepare a proposal for decision (PFD) pursuant to TEX. GOV'T. CODE ANN. § 2003.047(e)<sup>1</sup> and PURA95 § 1.101(e).

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<sup>1</sup> Text of section as added by Acts 1995, 74th Leg., ch. 765, § 1.35.

The Administrative Law Judge (ALJ) **GRANTS** the motion. These petitions will be consolidated with the above-referenced docket without the necessity of assignment of new docket numbers. Furthermore, EGS' motion to stay the effectiveness of the cities' ordinances pending the final disposition of this case is **GRANTED**.

SIGNED AT AUSTIN, TEXAS the 4th day of March 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

Book  
**State Office of Administrative Hearings**



**Shelia Bailey Taylor**  
Chief Administrative Law Judge

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PUBLIC UTILITY COMMISSION  
FILING CLERK

**March 11, 1997**

**Ms. Paula Mueller**  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

**RE: SOAH Docket No. 473-96-2285**  
**PUC Docket No. 16705**

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 40** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael F. O'Malley /ls*

Michael J. O'Malley  
Administrative Law Judge

/ls

SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705

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APPLICATION OF ENTERGY TEXAS §  
FOR APPROVAL OF ITS TRANSITION §  
PLAN AND THE TARIFFS IMPLEMENTING §  
THE PLAN, AND FOR AUTHORITY TO §  
RECONCILE FUEL COSTS, TO SET §  
REVISED FUEL FACTORS, AND §  
TO RECOVER A SURCHARGE FOR §  
UNDERRECOVERED FUEL COSTS §

BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS

ORDER NO. 40

GRANTING EGS'S MOTION FOR CONTINUANCE AND FOR SUPPLEMENTAL  
TESTIMONY TO RESPOND TO PRELIMINARY ORDER, GRANTING GENERAL  
COUNSEL'S MOTION TO TRANSFER CERTAIN PRELIMINARY ORDER ISSUES  
TO COMPETITIVE ISSUES PHASE, RULING ON THE MANNER IN WHICH  
CERTAIN ISSUES WILL BE ADDRESSED, AMENDING ORDER NO. 4, GRANTING  
CONTINUANCE IN THE FUEL PHASE, EXTENDING TIME TO FILE RESPONSE TO  
CITIES' NOTICE TO DISCLOSE, DEFERRING RULING ON REQUEST FOR GOOD  
CAUSE EXTENSION OF TIME TO FILE RESPONSES, AND  
SCHEDULING PREHEARING CONFERENCE

EGS's Motion for Continuance

On February 18, 1997, Entergy Gulf States, Inc. (EGS or the Company) filed a proposed procedure for responding to the Commission's January 22 Preliminary Order. EGS claims that the Preliminary Order raises issues of policy and fact that the Company either did not address in its prefiled testimony or addressed but in a way that is not directly responsive to the question. Because the Company has the burden of proof, it requests an opportunity to file supplemental direct testimony. EGS proposes to file its all of its supplemental direct testimony on April 4, 1997. The Company also proposes that this case's deadlines for Phases 2, 3, and 4, plus the jurisdictional deadline, be extended by 60 days in order to allow all parties an opportunity to review the supplemental testimony. EGS claims that no party is harmed because any base rate reduction resulting from the Commission final order will be retroactive on a Texas systemwide basis with interest to June 1, 1996.

Cities opposes the continuance because it delays any rate reductions for customers. Although EGS has agreed to make any rate reductions retroactive with interest to June 1, 1996, Cities does not believe this cures the delay, because customers may move, go out of business, or shut down. According to Cities, "Rate reductions delayed are rate reductions denied as to those customers." Furthermore, Cities does not believe supplemental testimony is necessary except perhaps for the Competitive Issues Phase. Texas Industrial Energy Consumers also opposes the delay in the proceeding except as to the Competitive Issues Phase. No other party opposes the continuance.

At the March 6, 1997 prehearing conference, the Administrative Law Judges (ALJs) granted EGS's request for a continuance and request to file supplemental testimony. (As described below, however, the continuance was extended to all four phases, not just phases 2, 3, and 4.) The ALJs find that the Commission's preliminary order and supplemental preliminary order raise additional issues that justify the filing of supplemental testimony. Because EGS will file supplemental testimony, the other parties will likely need to conduct additional discovery. Therefore, the ALJs find that a 60-day continuance is necessary in this proceeding. The following are the new deadlines to be followed in this proceeding:

**Fuel Phase**

<b><u>Evidence</u></b>	<b><u>Due</u></b>	<b><u>Objections</u></b>	<b><u>Responses</u></b>
<b>EGS Direct/Supp. Direct</b>	<b>4/4/97</b>	<b>5/2/97</b>	<b>5/9/97</b>
<b>Intervenors Direct</b>	<b>5/14/97</b>	<b>5/21/97</b>	<b>5/28/97</b>
<b>General Counsel Direct</b>	<b>5/21/97</b>	<b>5/28/97</b>	<b>6/4/97</b>
<b>EGS Rebuttal</b>	<b>6/3/97</b>	<b>6/10/97</b>	<b>6/17/97</b>

**Hearing on the merits begins June 9, 1997.**

**Discovery deadlines:**

<b>EGS Direct</b>	<b>5/14/97</b>
<b>Intervenor Direct, General Counsel Direct, and EGS Rebuttal</b>	<b>6/9/97</b>

**Revenue Requirement Phase**

<b><u>Evidence</u></b>	<b><u>Due</u></b>	<b><u>Objections</u></b>	<b><u>Responses</u></b>
EGS Direct/Supp. Direct	4/4/97	6/6/97	6/13/97
Intervenors Direct	6/16/97	6/23/97	6/30/97
General Counsel Direct	6/23/97	6/30/97	7/7/97
EGS Rebuttal	7/3/97	7/10/97	7/17/97

Hearing on the merits begins July 14, 1997.

**Discovery Deadlines:**

EGS Direct	6/16/97
Intervenor Direct, General Counsel Direct, and EGS Rebuttal	7/14/97

**Rate Design and Cost Allocation Phase**

<b><u>Evidence</u></b>	<b><u>Due</u></b>	<b><u>Objections</u></b>	<b><u>Responses</u></b>
EGS Direct/Supp. Direct	4/4/97	7/11/97	7/18/97
Intervenors Direct	7/23/97	7/30/97	8/6/97
General Counsel Direct	8/1/97	8/8/97	8/15/97
Intervenor and General Counsel Rebuttal	8/12/97	8/19/97	8/26/97
EGS Rebuttal	8/19/97	8/26/97	9/2/97

Hearing on the merits begins August 25, 1997.

**Discovery deadlines:**

EGS Direct	7/23/97
Intervenor Direct, General Counsel Direct, Intervenor and General Counsel Rebuttal, and EGS Rebuttal	8/25/97



**Competitive Issues Phase**

<b><u>Evidence</u></b>	<b><u>Due</u></b>	<b><u>Responses</u></b>	<b><u>Objections</u></b>
<b>EGS Direct/Supp. Direct</b>	<b>4/4/97</b>	<b>8/15/97</b>	<b>8/22/97</b>
<b>Intervenors Direct</b>	<b>8/25/97</b>	<b>9/2/97</b>	<b>9/9/97</b>
<b>General Counsel Direct</b>	<b>9/3/97</b>	<b>9/10/97</b>	<b>9/17/97</b>
<b>Intervenor and General Counsel Cross Rebuttal</b>	<b>9/12/97</b>	<b>9/19/97</b>	<b>9/26/97</b>
<b>EGS Rebuttal</b>	<b>9/19/97</b>	<b>9/26/97</b>	<b>10/3/97</b>

**Hearing on the merits begins September 28, 1997.**

**Discovery Deadlines:**

<b>EGS Direct</b>	<b>8/25/97</b>
<b>Intervenor Direct, General Counsel Direct, Cross Rebuttal, and EGS Rebuttal</b>	<b>9/29/97</b>

**The jurisdictional deadline is September 11, 1997.**

**Transfer of Preliminary Order Issues**

General Counsel seeks to transfer certain issues from the Revenue Requirement and Rate Design Phases to the Competitive Issues Phase. General Counsel requests that issues 1.b, 2, and 3 (under Revenue Requirement) and issues 1.b, 3.b, and 4 (under Rate Design) be transferred to the Competitive Issues Phase. No party objected to this request; therefore, the following issues will be considered in the Competitive Issues Phase:

1. What is the appropriate revenue requirement (and components thereof) to use in setting jurisdictional rates for EGS if a transition plan is approved?

2. What are the ramifications of the Company's acquisition of the remaining 30% of River Bend as part of its settlement regarding the plant?
3. Based upon an analysis of River Bend cost data and the cost of short- and long- term power and energy in the wholesale market, is the continued operation of River Bend economically justified? If not, is a reduction to EGS's overall revenue level appropriate based on the provisions of PURA95 §2.203?
4. What are the appropriate jurisdictional and interclass cost allocation methodologies (and components thereof) to use in setting Texas jurisdictional rates for EGS if a transition plan is approved?
5. How should EGS's rates be designed if a transition plan is approved?
6. It has been suggested that consumers who spend a large portion of their income on electricity may prefer to lock in electric rates for a period of time. Is it reasonable for the Commission to require EGS to offer low- or fixed-income customers a multi-year contract, including price guarantees, percent annual rate reductions, and openers for further rate reductions should circumstances warrant? If so, what would be the appropriate rate design, and how would this be implemented? Would such a requirement adversely affect competition, or do the benefits of such a plan outweigh potentially adverse effects on competition?

Clarification of Certain Issues

General Counsel requested that certain issues be clarified. The ALJs clarify these issues as follows:

1. The "General Issues" listed on pages 18-25 of the Preliminary Order will be addressed in the Competitive Issues Phase;

2. The quantification of merger savings will be addressed in the Revenue Requirement Phase;

3. Whether EGS's application is consistent with the merger agreement will be addressed in the Competitive Issues Phase;

4. EGS's proposal to transfer nuclear fuel from the fuel factors to base rates, including the amount of nuclear fuel expense to include in base rates, will be addressed in the Competitive Issues Phase; and

5. the following issues on pages 11 and 12 of the Preliminary Order will be addressed in the Competitive Issues Phase:

how the market should be structured once the seven-year period of EGS's transition plan is complete; the guarantees and benefits that customers should receive in the post-transition, competitive world; whether EGS should continue to own power plants and, if not, the compensation ratepayers should receive when the assets they paid for are transferred from EGS to another owner; what is and what will be the relationship between EGS and its current customers during and after the transition; and the specific service quality standards that should apply during and after the transition.

**Amendment to Order No. 4**

Page 11 of Order No. 4 refers to "Intervenor Cross Rebuttal." General Counsel requests that the Order be changed so that the deadlines refer to "Intervenor and General Counsel Cross Rebuttal." This request is now moot because the procedural schedule has been modified as described above in this Order; the requested change is reflected in the modified schedule. On page 14 parties are ordered to provide one "appeal copy" of evidence offered at the hearing on the merits. General Counsel requests that this be changed to "two appeal copies." The ALJs grant this request.

**Continuance of the Fuel Phase**

The Commission issued its oral ruling at the February 5, 1997 open meeting in *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*, Docket No 15102, \_\_ P.U.C. BULL. \_\_ (pending). Based on this oral ruling, General Counsel states that EGS will need to amend its fuel reconciliation schedules in this docket (Docket No. 16705). General Counsel requests that the Fuel Reconciliation Phase of this proceeding be suspended until such time as the Commission issues a written decision in Docket No. 15102 and the deadline for consideration of motions for rehearing has passed. At the March 6, 1997 prehearing conference, the ALJs granted General Counsel's motion to continue the fuel reconciliation phase of this proceeding. (As described above, however, the continuance includes not only the fuel reconciliation but also the fuel factor aspect of the fuel phase.) The ALJs continued this phase for 60 days to allow all parties to consider the impact of the final Order in Docket No. 15102. The fuel factor and fuel reconciliation portions of the fuel phase will be considered together; however, the ALJs will issue an interim fuel factor order after the fuel phase is complete but prior to the issuance of the Proposal for Decision.

**Extending Time to File Response to Cities' Notice to Disclose**

On March 5, 1997, EGS requested an additional five working days to respond to Cities' Notice to Disclose. The ALJs granted this request, as orally amended at the prehearing conference for an additional ten days. EGS's motion to preserve classification is therefore due by Friday, March 21, rather than by Friday, March 7, 1997.


**Deferring Ruling on Request for Good Cause Extension of Filing Deadline, and  
Scheduling Prehearing Conference**

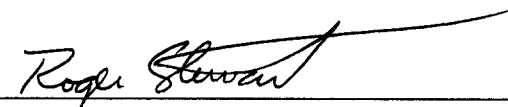
On March 4, 1997, EGS requested a good cause extension of time to file its overdue responses to six requests for information (RFIs). Pursuant to Order No. 35, EGS was to have filed all overdue RFI responses by March 4, 1997. In its March 4 pleading, however, EGS asked for additional time to answer six of those RFI responses. Because other parties had not had sufficient time to review and fully respond to this request (although Cities filed on March 6 a letter alleging that dozens of responses, not just six, remained overdue and unfiled), the ALJs ordered the parties


to file by March 12 a list of RFI responses remaining overdue. The ALJs also scheduled a March 20, 1997 prehearing conference at 9:00 a.m. to rule on this issue and other outstanding issues.

SIGNED AT AUSTIN, TEXAS the 11<sup>th</sup> day of March 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

  
\_\_\_\_\_  
ROGER W. STEWART  
ADMINISTRATIVE LAW JUDGE

  
\_\_\_\_\_  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 12, 1997

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PUBLIC UTILITY COMMISSION  
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Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 41** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael J. O'Malley /ls*

Michael J. O'Malley  
Administrative Law Judge

/ls

APPLICATION OF ENTERGY TEXAS §  
 FOR APPROVAL OF ITS TRANSITION §  
 PLAN AND THE TARIFFS IMPLEMENTING §  
 THE PLAN, AND FOR AUTHORITY TO §  
 RECONCILE FUEL COSTS, TO SET §  
 REVISED FUEL FACTORS, AND §  
 TO RECOVER A SURCHARGE FOR §  
 UNDERRECOVERED FUEL COSTS §

BEFORE THE STATE OFFICE  
 OF  
 ADMINISTRATIVE HEARINGS

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 PUBLIC UTILITY COMMISSION  
 PUBLIC FILING CLERK

ORDER NO. 41  
 DISCOVERY MATTERS

At the March 6, 1997 prehearing conference, the Administrative Law Judges (ALJs) granted a 60-day continuance in this proceeding, which allows for additional time for discovery. The ALJs, however, want to minimize the discovery problems that the parties have experienced to date in this docket. To better understand the discovery process in this docket, the ALJs believe that it is necessary to obtain certain information from the parties. Therefore, by 3:00 p.m., Tuesday, March 18, 1997, all parties shall provide the following information: the number of requests for information (RFIs) (including subparts) served on Entergy Gulf States, Inc. (Entergy) to date and an estimate by phase of the number of RFIs (including subparts) that will be served on Entergy for the remainder of the case. By 3:00 p.m., Monday, March 24, 1997, any party may offer suggestions to better manage the discovery process in this docket. The ALJs will consider these suggestions and establish discovery guidelines or possible discovery limitations for this docket.

SIGNED AT AUSTIN, TEXAS the 12<sup>th</sup> day of March 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

*Michael J. O'Malley*

MICHAEL J. O'MALLEY  
 ADMINISTRATIVE LAW JUDGE

*Roger W. Stewart*

ROGER W. STEWART  
 ADMINISTRATIVE LAW JUDGE

*Kathleen Sanford* For Kathleen Sanford

KATHLEEN SANFORD  
 ADMINISTRATIVE LAW JUDGE



State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

March 13, 1997

Ms. Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
1701 N. Congress Ave.  
Austin, TX 78701

RE: SOAH Docket No. 473-96-2285  
PUC Docket No. 16705

***APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION TO  
COMPETITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR  
THE AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL  
FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order No. 42** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael J. O'Malley*

Michael J. O'Malley  
Administrative Law Judge

/s

**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

<b>APPLICATION OF ENTERGY TEXAS FOR APPROVAL OF ITS TRANSITION PLAN AND THE TARIFFS IMPLEMENTING THE PLAN, AND FOR AUTHORITY TO RECONCILE FUEL COSTS, TO SET REVISED FUEL FACTORS, AND TO RECOVER A SURCHARGE FOR UNDERRECOVERED FUEL COSTS</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS</b>
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**ORDER NO. 42  
CORRECTING DATE  
AND  
STAYING ORDER**

Order No. 40 stated that the Competitive Issues Phase begins September 28, 1997, which is a Sunday. The Competitive Issues Phase will actually begin on Monday, September 29, 1997.

On March 11, 1997, Entergy Gulf States, Inc. (EGS) filed a Motion for Stay of Order Compelling Response to Cities 29-11. EGS states that good cause exists because production of the information exposes the Company to harm it seeks to avoid. Pursuant to P.U.C. PROC. R. 22.123(e), the Administrative Law Judges (ALJs) find that EGS has demonstrated good cause for stay of Order Compelling Response to Cities 29-11; therefore, the ALJs stay Order No. 17 and the oral modification of that Order pending a ruling by the Commission of EGS's appeal.

**SIGNED AT AUSTIN, TEXAS the 13<sup>th</sup> day of March 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

  
\_\_\_\_\_  
**MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE**

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# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

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March 14, 1997

**Ms. Paula Mueller**  
**Secretary of the Commission**  
**Public Utility Commission of Texas**  
**1701 N. Congress Ave.**  
**Austin, TX 78701**

**RE: SOAH Docket No. 473-96-2285**  
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FACTORS, AND TO RECOVER A SURCHARGE FOR UNDER-RECOVERED FUEL  
COSTS***

Dear Ms. Mueller:

Enclosed for filing is the original and one copy of **Order Nos. 43 and 44** in the above-referenced proceeding. Please file stamp and return the copy to SOAH.

Thank you for your assistance.

Sincerely,

*Michael J. O'Malley* /ls

Michael J. O'Malley  
Administrative Law Judge

/ls

SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705

APPLICATION OF ENTERGY TEXAS §  
FOR APPROVAL OF ITS TRANSITION §  
PLAN AND THE TARIFFS IMPLEMENTING §  
THE PLAN, AND FOR AUTHORITY TO §  
RECONCILE FUEL COSTS, TO SET §  
REVISED FUEL FACTORS, AND §  
TO RECOVER A SURCHARGE FOR §  
UNDERRECOVERED FUEL COSTS §

ORDER NO. 43  
RULING BASED ON IN CAMERA INSPECTION  
OF ENTERGY BOARD OF DIRECTOR MINUTES AND HANDOUTS

The Administrative Law Judge (ALJ) conducted an *in camera* inspection of Board of Director minutes pursuant to Public Utility Commission of Texas (Commission) rulings on the appeals of Order Nos. 17 and 24, Cities' Request for Information (RFI) Nos. 4-11 and 4-12 and Office of Public Utility Counsel (OPC) RFI No. 1-8. In Order No. 17, the Commission noted that in its appeal, Entergy Gulf States, Inc. (EGS) expressed concern over the dissemination of information from the minutes that relate to Entergy's potential acquisitions of other companies. EGS had argued that release of "highly sensitive confidential" minutes under the protective order of acquisition-related information would not preclude harm to Entergy because outside counsel and consultants employed by EGS' competitors would have direct access to this information, which access could affect the advice and opinions relayed by the outside attorneys and consultants to their clients. After noting those arguments, the Commission ordered EGS to produce the Entergy Board of Director' minutes and handouts for 1995 and 1996 for *in camera* review in accordance with the procedures proposed by EGS. Included in EGS' procedures is the directive to the ALJ to determine whether all irrelevant information is properly removed and whether Cities have obtained all information contained in the expurgated minutes to which they are lawfully entitled.

The ALJ concludes that the Entergy Board of Director minutes should be scrutinized *in camera* to determine which redacted portions are relevant to or could lead to the discovery of

admissible evidence. An adjunct to that review is a determination of whether any portions relating to Entergy acquisitions should be accorded a trade secret status.<sup>1</sup> If any qualify, then those documents would not be disclosed at all to other parties. This sort of protection would be accorded trade secrets under certain circumstances. The Texas Rules of Civil Evidence apply:

A person has a privilege, which may be claimed by him or his agent or employee, to refuse to disclose and to prevent other persons from disclosing a trade secret owned by him, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice. When disclosure is directed, the judge shall take such protective measure as the interests of the holder of the privilege and of the parties and the furtherance of justice may require.<sup>2</sup>

EGS does not claim that discussions by the Board of Directors are trade secrets, or that they form any other privilege; however, the ALJ finds that such discussions do, in fact, fall within the general definition of trade secret:

A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.<sup>3</sup>

In this case, the acquisition discussions and related matters are based on a compilation of information peculiar to Entergy--acceptable terms and price, source of funds, proposed capital structure, financing arrangement, and other details--which give Entergy an opportunity to obtain a competitive advantage, but more particularly would jeopardize any such advantage should the information be disclosed to competitors of Entergy.

The *in camera* review revealed that a majority of the redacted minutes contained matters

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<sup>1</sup>Should any party appeal the ruling in this order regarding relevance, and the Commission granted that appeal, it could become necessary to conduct another *in camera* review in order to determine whether acquisition-related discussions are privileged. Therefore, the ALJ extended her review here to consider the "character" of the discussions in order to preclude another *in camera* review of such discussions following an appeal.

<sup>2</sup>Tex. R. Civ. Evid. 507

<sup>3</sup>See *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex. 1958); Restatement (Second) of Torts §757 comment b (1939).

irrelevant to this docket, such as names of participants at the meetings, references to reports that were made without the substance of the reports, voting on stock dividends, scheduling future meeting(s), naming proxy committees and nominees for election at annual meetings, establishing other committees, and discussions regarding potential investments and/or financing arrangements for them. In addition, while the ALJ finds them to be irrelevant, those discussions relating to acquisitions/investment also fall under the "trade secret" designation described above and would be privileged and not subject to disclosure.

EGS is hereby ordered to release to the Cities and OPC the following pages from the Board of Director minutes which it had previously redacted, but is not required to disclose any other redacted pages as those are not relevant to this proceeding, nor are they calculated to lead to the discovery of admissible evidence.

<u>Date of Meeting</u>	<u>Pages to be Released</u>
25 May 1995	2 through 4
28 July 1995	5
26 January 1996	4 through 6
24 March 1996	5 through the last "RESOLVED" paragraph on 7
16 May 1996	2 through 9
26 July 1996	4 through 7, 18 through 2nd paragraph of 19
16 September 1996	2 through 4
25 October 1996	5, 7 through 9
6 December 1996	2 through 4, 11 (through last "RESOLVED" paragraph)

Handouts:

EGS submitted unredacted versions of handouts distributed at EGS and Entergy Board of Director meetings. The documents submitted for review by the ALJ were stamped "highly sensitive"; however, the review requested by EGS is to determine the relevance of these handouts

to this proceeding.<sup>4</sup> The ALJ received handouts related to EGS/GSU Board meetings and three groups of handouts for *in camera* review related to Entergy Board meetings. Two groups contain handouts to the Entergy Board during the years 1995 and 1996. The other contains handouts to the Entergy Corporation Board as related to EGS for the same time period.

**EGS Board handouts:** The ALJ believes that EGS is providing these handouts to the parties. If this is not correct, she finds that all EGS/GSU Board handouts are relevant to or may lead to the discovery of admissible evidence in this proceeding and should be released along with the EGS/GSU Board of Director minutes. The ALJ makes no finding as to whether these documents are or contain highly sensitive confidential information, but she assumes EGS will provide them under the terms of that section of the protective order if they do.

**Entergy Corporation Board handouts:** Most of the handouts are agendas for the Board meetings and other matters specifically discussed in the meetings and are not relevant to this docket. Furthermore, to the extent that pages of the minutes are released, and the handouts are duplicative, they need not be released. The following documents may be relevant or lead to the discovery of admissible evidence. EGS therefore shall release the following:

From the 1995 Entergy handouts--

1. A 25 September 1995 memorandum to the Board of Directors from Jerald McInvale;
2. What appears to be a 1995 annual report, which if already provided to the parties need not be provided again in response to this order; and
3. A document entitled "Financial Results Year-to-Date" dated August 1995.

From the 1996 handouts--

1. Service Recognition Program

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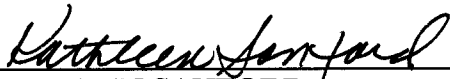
<sup>4</sup>See the Commission's Order on the appeal of Order No. 24 and Letter from Stephen Fogel to the undersigned ALJ dated 4 March 1997 at page 2, second paragraph.

2. Pension Investment Management Proposal Package
3. Executive Security Proposal Package
4. ANO 2 Steam Generator Replacement
5. Board of Directors Service Recognition Program Director Payout Formula
6. River Bend Nuclear Station Power Uprate & Advanced Design High Pressure Steam Path

In addition, EGS shall provide all the documents included in the packet entitled "Highly sensitive unredacted mailing & handouts to Entergy Corp. Board in Response to OPC 1-8(b), Documents relevant to GSU 1995 submitted for *in camera* review pursuant to confidentiality disclosure agreement." It is not clear to the ALJ if EGS has agreed to provide these handouts; but if EGS has not, it does appear that these could be relevant to this docket.

SIGNED AT AUSTIN, TEXAS the 14<sup>th</sup> day of March 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
\_\_\_\_\_  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE



Boyle

# State Office of Administrative Hearings



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Shelia Bailey Taylor  
Chief Administrative Law Judge

March 14, 1997

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**Secretary of the Commission**  
**Public Utility Commission of Texas**  
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Sincerely,

*Michael J. O'Malley /ls*

Michael J. O'Malley  
Administrative Law Judge

/ls

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**SOAH DOCKET NO. 473-96-2285  
PUC DOCKET NO. 16705**

**APPLICATION OF ENTERGY TEXAS  
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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**ORDER NO. 44  
DENYING MOTION TO COMPEL**

On December 20, 1996, Entergy Gulf States, Inc. (EGS) filed objections to General Counsel's eighth request for information (RFI). The parties resolved many of the issues contained in General Counsel's eighth RFI. The only remaining dispute involves question BA-102. On March 4, 1997, General Counsel filed a motion to compel EGS to respond to BA-102. On March 12, 1997, EGS responded to the motion to compel. General Counsel's eighth RFI, Question BA-102 states:

Please provide all documents prepared by an affiliate of EGSI that EGSI has been provided a copy of that discuss or evaluate performance-based recovery mechanisms for fossil fuels.

General Counsel seeks to compel production of the following list of privileged documents: PUCT8-BA-102-16, PUCT8 BA-102-17, PUCT8 BA-102-18, PUCT8-BA-102-20, PUCT8 BA-102-28, PUCT8 BA-102-30, PUCT8 BA-102-31, and PUCT8 BA-102-32 (referred to hereinafter as Documents 16, 17, 18, 20, 28, 30, 31, and 32. General Counsel believes that many of the documents labeled work product privilege appear to be outside the scope of this privilege. EGS has agreed to provide Documents 16, 17, 18, and 30. Therefore, this Order addresses only the production of Documents 20, 28, 31, and 32. EGS objects to providing these documents because it calls for production of work product prepared by or for EGS's legal counsel in contemplation of litigation.