

The Iowa Commission found that Northwestern Bell had met most of these requirements but that in the area of value to competitors the testimony was in the nature of conclusions without much in the way of supporting data. In addition, the Iowa Commission was not convinced that information regarding Northwestern Bell's revenue requirements and cost studies would be of real value to its competitors.

The material which Northwestern Bell sought to protect was required to be filed as part of the application for a rate increase. The Commission found that intervenors' ability to access the information by signing a protective agreement provided insufficient access when there might be members of the public who were not intervenors in the proceeding who wished to be informed about the basis of the company's application in order to determine if they wished to participate in the proceedings or for any other reason. The Commission also found that if the information were admitted in an *in camera* hearing the final decision would have to be restricted and thereby deprive the public of information on the basis of the final decision in the matter. Finally, the Commission concluded that even if the documents in question were trade secrets, which it found they were not, the information was of such a nature that it would be necessary to make it available to the public.

The examiners have found very helpful the case of Zenith Radio Corporation v. Matsushita Electric Industrial Company, Limited, 529 Fed. Supp. 866 (E.D. Pa., 1981) which discusses standards for declassification of documents in complex litigation. The Pennsylvania court notes that "courts have an obligation to explain their decisions" and that the "core function of the right to inspect and copy judicial records can only be served by the release in full of documents that are the basis of a dispositive ruling." *Id.* at 901 (emphasis added). In order to decide whether the interest that favors sealing a record are weighty enough to permit closure, the court must balance these interests against the presumption of public access. The court concluded in Zenith that the presumption of access to evidentiary materials is strong and where the balance of interest favors the denial of access to materials,

the protection given must be no greater than necessary. Therefore, "only that portion of the public may be excluded for only that portion of the proceeding that the court finds to be strictly and inescapably necessary to protect the interests asserted. . . in support of [a] motion to close a hearing." *Id.* at 903 f.n. 73. The decision to close or seal a record is made on a case by case basis. The Pennsylvania court states as a general rule that "the more fully materials are included in the public case record, the stronger the presumption of access." However, "the presumption of access to materials merely referred to in a general way is relatively weak, at least if the general purposes of the right to inspect and copy are well served absent release of those materials." *Id.* at 904

The interests for and against disclosure are weighed differently depending upon the category and type of information. Factors that generally favor disclosure include the presumption of public access and, in Texas administrative proceedings, the explicit public interest in the affairs of government as set out in Section 1 of TORA. However, there are also public interests favoring nondisclosure. Generally, society is interested in the protection of trade secrets and other valuable commercial information, as recognized by copyright, trademark, and patent statutes, and rules of evidence affording protection to those interests. It is in these rules and statutes that public and private interest coincide. Non-disclosure is also in the public interest insofar as the orderly management of complex litigation turns on the assurance given to parties that their legitimate interests will be protected. The Zenith case concluded that a considerable amount of sensitive commercial information had to be declassified because without its release the final opinion of the court (summary judgment) could not be understood.

In light of P.U.C. PROC. R. 21.101, which mandates that all hearings be open to the public, it will be an extremely rare occurrence that the examiners will consent to closing the hearing to the public. The party seeking closure of the hearing or sealing of exhibits shall bear the burden of showing that the material warrants protection. Therefore, each party is ORDERED to make every effort to present its position and to elicit testimony without requiring

closure of the hearing. In addition, parties are strongly encouraged to prepare nonconfidential summaries of protected documents in lieu of tendering confidential documents at the hearing. SWB may propose summaries when submitting its notice of intent to assert a privilege, in accordance with the procedures established in Section II of this Order. The parties are also urged to frame questions concerning confidential information in such a way as to obviate the need for tendering the confidential document into evidence. If a confidential document is tendered, the parties shall make every effort to mask the confidential portions so that the evidence is not tendered under seal. Finally, when a sealed document is offered into evidence, the party offering the document SHALL be prepared to address the necessity of the admission of that document.

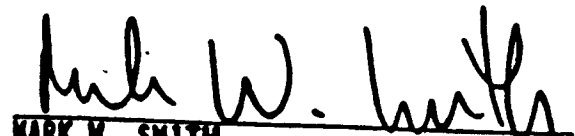
In order to close a proceeding or seal an exhibit, the examiners should articulate the countervailing interests sought to be protected and make findings on the record supporting the decision to close the hearing or seal the exhibit. In order to make such findings, the record must demonstrate that closure is essential to preserve an overriding interest and that the protection is narrowly tailored to serve that interest. See Publicker Industries, Inc. v. Cohen, 733 F.2d 1059 (3d Cir. 1984). If evidence is admitted under seal and the examiner or Commissioners subsequently ascertain that it is dispositive of an issue in this docket, the evidence MAY BE DECLASSIFIED after notice and hearing. There will be no public release of the evidence pending a reasonable opportunity for judicial appeal. If the

evidence is admitted under seal a date for declassification will be imprinted on the exhibit and the date may be in perpetuity.

SIGNED AT AUSTIN, TEXAS on this the 11<sup>th</sup> day of December 1989.

PUBLIC UTILITY COMMISSION OF TEXAS

  
J. KAY TROSTLE  
ADMINISTRATIVE LAW JUDGE

  
MARK W. SMITH  
ADMINISTRATIVE LAW JUDGE

Scob

# State Office of Administrative Hearings



Shelia Bailey Taylor  
Chief Administrative Law Judge

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May 29, 1997

Ms. Kathy Hamilton  
Assistant Director  
Office of Policy Development  
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. Hamilton

Enclosed for filing is the original and one copy of **Order No. 82** 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

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

ORDER NO. 82

MEMORIALIZING RULINGS AT PREHEARING CONFERENCE ON  
EGS'S MOTION TO PRESERVE DESIGNATION (PHASE ONE)

On February 28, 1997, the Cities in this docket (Cities) filed a notice to disclose certain documents designated by Entergy Gulf States, Inc. (EGS) as confidential or highly sensitive under the protective order in this docket. On March 21, EGS filed its motion to preserve designation. On April 4, Cities filed its response to EGS's motion. On April 11, EGS filed a reply to Cities' response. In a May 28 prehearing conference, after considering the above pleadings, various supplemental pleadings and letters, and the designated documents submitted by EGS for the ALJ's *in camera* review, the Administrative Law Judge (ALJ) ruled on whether to change the designation of certain schedules, workpapers, responses to requests for information (RFIs), and other documents, as summarized below:

***Materials Remaining Designated As Is***

Schedules: H-6.2c, -12.1, -12.2a, -12.2b, -12.3a, 12.4a-g, -12.5b-e, I-1.2, -1.3, -4, -7, -15, and Ex. WEH-6.

Workpapers: WP/I-4 and Rives.

RFIs: Cities 9-49, 9-50, 9-76, 9-89, 10-13, 10-25, 10-26, 10-59, 10-60, 10-86, 10-87, 19-4, 32-22, 32-23, 36-1, 38-48, 38-65, and 38-75.

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***Materials Changing Designation from Highly Sensitive to Confidential***

Schedules: I-11.

Workpapers: WP/I-11 and Wise.

RFIs: [none]

***Materials Changing Designation from Highly Sensitive or Confidential to Public***

Schedules: H-12.3c and I-21.

Workpapers: [none]


RFIs: Cities 10-1, 10-21, 38-27, 38-53, 38-72, 49-17, 49-18, and PUCT 22-GWD-362.

The above rulings were made subsequent to the partial and full disclosures made by EGS, as well as the withdrawal or modification of requests made by Cities. The ALJ also initially made a ruling on PUCT RFI No. 5-CA-82, but then withdrew that ruling upon being advised that EGS had publicly disclosed all but the coal-related information in that RFI response; given that Cities stated that it was not pursuing rulings on coal matters, the ALJ withdrew the ruling.

In addition, the ALJ found that certain documents appear to be deserving of protection, but that Cities' reply raises concerns about which the ALJ wishes to consider further evidence. The ALJ therefore requested EGS to file additional affidavits by Friday, May 29, at 3:00 p.m., and authorized Cities (and other parties) to respond by Tuesday, June 3, at 3:00 p.m. Those documents are as follows: Schedules C-6.7 and I-1.1; Cities RFI Nos. 46-2, 9-51 to 9-54, and 10-71.

**SIGNED AT AUSTIN, TEXAS the 29th day of May 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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

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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  
REVISED FUEL FACTORS, AND  
TO RECOVER A SURCHARGE FOR  
UNDERRECOVERED FUEL COSTS

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BEFORE THE STATE OFFICE  
OF  
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ORDER NO. 86  
CITIES' MOTION TO COMPEL AND MOTION FOR  
EXPEDITED RULING AND CITIES' MOTION FOR EXTENSION OF TIME

*Motion to Compel*

On 3 June 1997, Cities FAXed to the Administrative Law Judge (ALJ) a motion requesting that she rule immediately on three Requests for Information (RFIs) that Entergy Gulf States, Inc. (EGS) had agreed to answer, but whose answers, according to Cities, were incomplete. Within three working days of the date of this order, EGS shall provide the information itemized below, or shall file a response explaining why the material has not been or can not be provided.

Cities 38-36: Provide the 1997 Business Plan for River Bend.

Cities 38-45: Provide the documentation supporting the information provided in response to Cities 38-44.

Cities 74-4: Provide the supporting documents for the labor costs listed in the response to this RFI.

*Motion for Extension of Time*

By filing dated 2 June 1997, Cities requested that it be given six days of additional time in which to answer EGS' response regarding Cities' notice to disclose. Cities' explanation is reasonable and the request is granted. Cities shall file their response on or before 17 June 1997.

SIGNED AT AUSTIN, TEXAS the 4<sup>th</sup> day of June 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford

KATHLEEN SANFORD

ADMINISTRATIVE LAW JUDGE



*Good*

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

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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 §  
UNDERRECOVERED FUEL COSTS §

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 92  
REQUIRING EGS TO RESPOND MORE  
SPECIFICALLY TO CITIES' 74-4

On this date, Cities filed a motion requesting the Administrative Law Judge (ALJ) to compel Entergy Gulf States, Inc. (EGS) to provide the details necessary to make its column of numbers filed in response to Cities 74-4 intelligible. Cities attached Attachment B to its motion. As permitted in P.U.C. PROC. R. 22.78(c), the ALJ finds good cause to except to the five-day response period normally allotted to parties in responding to motions to compel. Because the time is drawing very near for Cities to file their revenue requirement testimony, it is incumbent upon EGS to provide the requested information as soon as possible. Therefore, EGS shall, no later than Friday, 13 June 1997, provide to Cities the details necessary to clarify and make intelligible the numbers found on page Cities 74-004 Addendum #1 contained in Attachment B to Cities' June 10 motion.

SIGNED AT AUSTIN, TEXAS the 10<sup>th</sup> day of June 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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orig. *Good*

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. 94

GRANTING STAY OF ORDER DECLASSIFYING  
SCHEDULES Q-8.1 and Q-8.3

On June 12, 1997, Entergy Gulf States, Inc. (EGS ) filed a Notice of Intent to Appeal Order No. 90 with regard to Schedules Q-8.1 and Q-8.3. EGS requests permission to file its appeal on Monday, June 16, 1997, and requests that declassification of Schedules Q-8.1 and Q-8.3 be stayed until the filing of the appeal on June 16, 1997. The Administrative Law Judge, finding that the request has merit, permits EGS to file its appeal on June 16, 1997, and **orders** that declassification of Schedules Q-8.1 and Q-8.3 be stayed pending a ruling by the Commission of the appeal.

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

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Katherine L. Smith  
KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE

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PUC DOCKET NO. 16705

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

ORDER NO. 96  
GRANTING EGS' MOTION FOR EXTENSION OF TIME

Entergy Gulf States, Inc. (EGS) has requested ten days in which to consider appeal of Order No. 95, which declassified various documents. Because it does not appear that parties will be harmed by this extension, given the fact that the hearing in the revenue requirement phase does not begin until 28 July 1997, the motion is granted. There is good cause to rule on the motion prior to the time parties are required to file responsive pleadings, because under the terms of the protective order, EGS is required to file its appeal today, leaving no time for delay in ruling. See P.U.C. PROC. Rs. 22.5(b) and 22.78(c).

Order No. 95 was issued on June 24. P.U.C. PROC. R. 22.123(b) permits parties to appeal an interim order within ten days of issuance. Therefore, if EGS chooses to appeal the order it must do so by 7 July 1997. The effect of Order No. 95 is stayed until that time.

SIGNED AT AUSTIN, TEXAS the 27<sup>th</sup> day of June 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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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  
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ORDER NO. 98  
SCHEDULING PREHEARING CONFERENCE  
(COMPETITIVE ISSUES PHASE)

Pursuant to P.U.C. PROC. R. 22.121, a prehearing conference will be convened at 9:00 a.m., Wednesday, July 9, 1997, in a hearing room at the State Office of Administrative Hearings, Stephen F. Austin Bldg., 1700 N. Congress Ave., Suite 1100, Austin, Texas. This prehearing conference will be limited to those parties participating in the Competitive Issues Phase. At the prehearing conference, the parties should be prepared to discuss the issues in the Competitive Issues Phase, settlement of those issues, and any other matters raised by the Administrative Law Judge or the parties relating to the Competitive Issues Phase.

SIGNED AT AUSTIN, TEXAS the 1st day of July 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. O'Malley  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

*Good*

SOAH DOCKET NO. 473-96-2285  
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BEFORE THE STATE OFFICE  
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APPLICATION OF ENTERGY TEXAS  
FOR APPROVAL OF ITS TRANSITION  
TO COMPETITION PLAN AND THE  
TARIFFS IMPLEMENTING THE PLAN,  
AND FOR THE AUTHORITY TO  
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ORDER NO. 99  
CONCERNING NORTH STAR STEEL TEXAS, INC.'S  
RENEWED MOTION FOR PARTIAL DISMISSAL OF APPLICATION

The Administrative Law Judge has been advised that the Public Utility Commission of Texas has voted by separate ballot not to consider North Star Steel Texas, Inc.'s Renewed Motion for Partial Dismissal of Application.

SIGNED AT AUSTIN, TEXAS the 1st day of July 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. O'Malley  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

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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. 109  
STAYING ORDER NO. 107

On July 28, 1997, Entergy Gulf States, Inc. filed an Appeal of Order No. 107 and Motion for Reconsideration and a Motion for Stay of Order No. 107 Pending Appeal. EGS requests reconsideration of Order No. 107 and a stay of Order No. 107, which compels production of a calculation requested in RFI No. 36-10 by the Office of Public Utility Counsel. The Administrative Law Judge denies the Motion for Reconsideration, but orders that Order No. 107 be stayed pending a ruling by the Commission of the appeal.

SIGNED AT AUSTIN, TEXAS the 29th day of July 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Katherine L. Smith  
KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE

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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

ORDER NO. 111  
SCHEDULING HEARING TO DETERMINE IF GOOD CAUSE EXISTS  
TO ISSUE A SUBPOENA

Pursuant to P.U.C. PROC R. 22.202, a hearing shall be convened at 8:00 a.m., Friday, August 8, 1997, at the SOAH hearing rooms, 1700 N. Congress Avenue, Suite 1100, Austin, Texas to determine if good cause exists to issue a subpoena requiring the attendance of Mr. Curtis Seidlits and Mr. Jimmy Glotfelty at their depositions on Monday, August 11, 1997, at 9:00 a.m. at the offices of Brown McCarroll & Oaks Hartline.

SIGNED AT AUSTIN, TEXAS the 7<sup>th</sup> day of August 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

*Michael J. O'Malley*

MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

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

APPLICATION OF ENTERGY TEXAS § BEFORE THE STATE OFFICE  
FOR APPROVAL OF ITS TRANSITION § OF  
PLAN AND THE TARIFFS IMPLEMENTING § ADMINISTRATIVE HEARINGS  
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. 112  
RULING ON SOAH'S AUTHORITY TO ISSUE COMMISSION FOR DEPOSITION  
AND AUTHORITY TO AUTHORIZE ISSUANCE OF SUBPOENA

On August 8, 1997, the Administrative Law Judges (ALJs) at the State Office of Administrative Hearings (SOAH) conducted a hearing to determine if good cause exists to authorize the issuance of subpoenas requiring Mr. Curtis Siedlits and Mr. James Glotfelty to appear at depositions to be conducted by North Star Steel Texas, Inc. (North Star). At the hearing, Mr. Chabot, attorney for North Star, indicated that the depositions are necessary to discover information regarding whether two Commissioners of the Public Utility Commission of Texas engaged in ex parte communications with Entergy Gulf States, Inc. (EGS) on issues in EGS's pending rate case. If North Star were to determine that ex parte communications had occurred, then it would file a motion seeking recusal of the Commissioners involved in the ex parte communications.

Although the SOAH ALJs have the authority to issue commissions to take depositions and to issue authorizations for subpoenas, the SOAH ALJs' authority is limited to matters referred by the Commission, which in this instance are matters relating to the rate proceeding. Ex parte matters and motions for recusal as they relate to the Commissioners are not matters that the SOAH ALJs have authority to decide, because those matters have not been referred by the Commission pursuant to TEX. GOV'T CODE ANN. §2003.047(e) (Vernon Pamphlet 1997). For this reason, the SOAH



ALJs will not rule on the requests for commissions for depositions or the requests for subpoenas filed by North Star.

SIGNED AT AUSTIN, TEXAS the 8<sup>th</sup> day of August 1997.


STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE



ROGER W. STEWART  
ADMINISTRATIVE LAW JUDGE



KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE



KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE

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RECONCILE FUEL COSTS, TO SET	§	
REVISED FUEL FACTORS, AND	§	
TO RECOVER A SURCHARGE FOR	§	
UNDERRECOVERED FUEL COSTS	§	

**ORDER NO. 119  
GRANTING REQUEST OF ENTERGY GULF STATES, INC.  
AND GENERAL COUNSEL FOR FURTHER EXTENSION  
OF SCHEDULE AND FOR EXPEDITED RULING**

On September 2, 1997, Entergy Gulf States, Inc. (EGS or the Company) filed a request for an additional extension of the procedural schedule. In that request, EGS stated that the General Counsel of the Public Utility Commission of Texas (General Counsel) has agreed to support EGS's motion for a 30 day extension of the procedural schedule in consideration of the Company's agreement to extend voluntarily the time for General Counsel to respond to EGS's consolidation motion. The effect would be to add 14 days to the dates established in Order No. 118.

Because EGS has requested an immediate ruling and because of the impending deadline for General Counsel to respond to the motion for consolidation, the Administrative Law Judges (ALJs) grant EGS's request to extend the procedural schedule prior to receiving responses. Action on this request, however, is subject to modification based on a timely responsive pleading. P.U.C. PROC. R. 22.70(c). The revised procedural schedule is as follows:

Revenue Requirement Phase

9/26/97	General Counsel's reply to EGS's response to General Counsel's motion for summary decision on the merits
10/14/97	Initial Briefs
10/29/97	Reply Briefs

Rate Design Phase

9/16/97	EGS rebuttal testimony
9/30/97	Discovery on EGS rebuttal testimony begins; Objections to Intervenor and General Counsel rebuttal testimony
10/06/97	Hearing begins at 10:00 a.m. Discovery on Intervenor and General Counsel rebuttal testimony
10/07/97	Objections to EGS rebuttal testimony; Responses to objections to Intervenor and General Counsel rebuttal testimony
10/14/97	Discovery on EGS rebuttal testimony ends; Response to objections to EGS's rebuttal testimony

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SOAH DOCKET NO. 473-96-22  
PUC DOCKET NO. 16705

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

ORDER NO. 120

PUC DOCKET NO. 17899

REMAND OF DOCKET NO. 7195 § PUBLIC UTILITY COMMISSION  
§  
§ OF TEXAS

ORDER NO. 1

GRANTING, WITH MODIFICATION, REQUEST REGARDING  
ANSWER DATE TO MOTION TO CONSOLIDATE

On September 2, 1997, Entergy Gulf States, Inc. (EGS) and General Counsel filed a motion requesting, among other things, that the Commission set a date for answer to EGS' motion to consolidate the remand of Docket No. 7195 with Docket No. 16705 for 14 days following the termination of negotiations as unsuccessful.

EGS' and General Counsel's request is **GRANTED**. However, because the Commission will not be aware of the date upon which the negotiations have terminated, the following modification is made: The date for answer to EGS' motion to consolidate the remand of Docket No. 7195 with Docket No. 16705 shall be 14 days following the date of notification to the Commission that negotiations have terminated.



ISSUED BY THE OFFICE OF POLICY DEVELOPMENT  
ON BEHALF OF THE PUBLIC UTILITY COMMISSION OF TEXAS  
ON THE 3RD DAY OF SEPTEMBER 1997

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


ORDER NO. 125  
ADMITTING THE AFFIDAVITS OF ROMINES AND WRIGHT

Entergy Gulf States, Inc. (EGS) submitted the affidavit of J. David Wright in response to the affidavit of Candice Romines offered by General Counsel. Cities objected to one paragraph of Mr. Wright's affidavit, paragraph nine, saying Mr. Wright expressed the opinion of EGS witness James Warren. The Administrative Law Judge finds that Mr. Wright only referenced a portion of Mr. Warren's testimony and did not offer any further opinion of Mr. Warren.

The affidavits of Ms. Romines, General Counsel Ex. 44A, and Mr. Wright, EGS Exhibit No. 148B, are hereby admitted into evidence in the revenue requirement phase of this docket.

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

STATE OFFICE OF ADMINISTRATIVE HEARINGS



KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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APPLICATION OF ENTERGY TEXAS	§	BEFORE THE STATE OFFICE
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UNDERRECOVERED FUEL COSTS	§	ADMINISTRATIVE HEARINGS

ORDER NO. 126  
GRANTING REQUEST TO WITHDRAW

On October 13, 1997, Florida Gas Transmission Company filed a request to withdraw as a party to this proceeding. The Administrative Law Judge grants this request.

SIGNED AT AUSTIN, TEXAS the 15<sup>th</sup> day of October 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. O'Malley  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

# MISSION

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OF

**ORDER NO. 127**  
**GRANTING EGS' REQUEST FOR PARTIAL RECONSIDERATION**  
**REGARDING EXHIBIT NO. 151**

Yesterday, Entergy Gulf States, Inc. (EGS) requested that the summaries identified as EGS Exs. 151b, 151c, and 151e be admitted into evidence because they summarize the survey results that EGS is filing as Ex. 151 to complete Cities Ex. 132. Assuming that the new Ex. 151 is as EGS describes it and complies with the ruling at the 7 October 1997 posthearing conference, it is reasonable that these summaries be admitted along with EGS Ex. 151. Therefore, EGS' request to include Exs. 151b, 151c and 151e with its optional completeness filing is granted.

**SIGNED AT AUSTIN, TEXAS the 15<sup>th</sup> day of October 1997.**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford

## KATHLEEN SANFORD

## ADMINISTRATIVE LAW JUDGE

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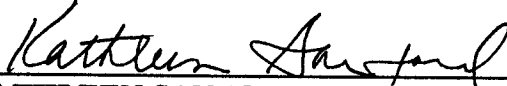
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<b>TARIFFS IMPLEMENTING THE PLAN</b>	<b>§</b>	
<b>AND FOR THE AUTHORITY TO</b>	<b>§</b>	<b>OF</b>
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<b>REVISED FUEL FACTORS, AND TO</b>	<b>§</b>	
<b>RECOVER A SURCHARGE FOR</b>	<b>§</b>	
<b>UNDERRECOVERED FUEL COSTS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**ORDER NO. 128  
GRANTING EGS' REQUEST FOR ADDITIONAL  
TIME TO RESPOND TO ORDER NO. 124**

Entergy Gulf States, Inc. (EGS) has requested that Order No. 124, certified to the Commission on 13 October 1997, not be considered on an expedited schedule. The undersigned finds EGS' arguments to be reasonable and hereby revises Order No. 124 to require that responses are due within 13 days from submission of the order, in conformance with P.U.C. PROC. R. 22.127. Therefore, EGS' request is granted and parties' responses to Order No. 124 shall be filed by 27 October 1997.

**SIGNED AT AUSTIN, TEXAS the 15<sup>th</sup> day of October 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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

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<b>APPLICATION OF ENTERGY TEXAS</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>FOR APPROVAL OF ITS TRANSITION</b>	<b>§</b>	
<b>TO COMPETITION PLAN AND THE</b>	<b>§</b>	
<b>TARIFFS IMPLEMENTING THE PLAN</b>	<b>§</b>	
<b>AND FOR THE AUTHORITY TO</b>	<b>§</b>	<b>OF</b>
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<b>RECOVER A SURCHARGE FOR</b>	<b>§</b>	
<b>UNDERRECOVERED FUEL COSTS</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**ORDER NO. 132  
REQUESTING INFORMATION FROM ENTERGY GULF STATES, INC.**

By October 29, 1997, each party participating in the Competitive Issues Phase shall provide Entergy Gulf States, Inc. (EGS) with a list of witnesses that it does not plan on cross-examining. On October 30, 1997, EGS shall file a list of parties that plan on participating in the Competitive Issues Phase of this proceeding and a list of the witnesses that will not be cross-examined by any party. This information will allow the Administrative Law Judge to estimate the length of the hearing, and determine the order of presentation and order of cross-examination. This information will also assist the parties in making arrangements for witnesses to appear at the hearing.

**SIGNED AT AUSTIN, TEXAS the 23rd day of October 1997.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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

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APPLICATION OF ENTERGY TEXAS	§	BEFORE THE STATE OFFICE
FOR APPROVAL OF ITS TRANSITION	§	
TO COMPETITION PLAN AND THE	§	
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AND FOR THE AUTHORITY TO	§	OF
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REVISED FUEL FACTORS, AND TO	§	
RECOVER A SURCHARGE FOR	§	
UNDERRECOVERED FUEL COSTS	§	ADMINISTRATIVE HEARINGS

ORDER NO. 134  
CORRECTING ORDER NO. 129,  
ORDERING EGS TO FILE ITS SEQUENCE OF WITNESSES,  
AND RESCHEDULING HEARING ON THE MERITS

On October 23, 1997, Entergy Gulf States, Inc. (EGS) informed the Administrative Law Judge (ALJ) of a typographical error in Order No. 129. Order No. 129 states that the testimony on page 23, line 24 through page 24, line 2 is stricken. The ALJ corrects Order No. 129 to state that page 23, line 21 through page 24, line 2 is stricken.

EGS shall file its sequence of witnesses for its direct and rebuttal cases by 3:00 p.m., Tuesday, October 28, 1997.

Because of the open meeting scheduled for Tuesday, November 4, 1997, the ALJ postpones the hearing on the merits in the Competitive Issues Phase until 10:00 a.m., Wednesday, November 5, 1997.

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

STATE OFFICE OF ADMINISTRATIVE HEARINGS

*Michael J. O'Malley*

MICHAEL J. O'MALLEY

ADMINISTRATIVE LAW JUDGE

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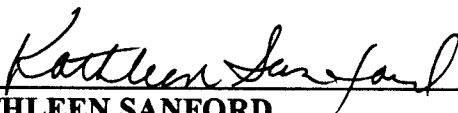
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ORDER NO. 135  
REQUIRING EGS TO PRODUCE TAPES IMMEDIATELY

At the 7 October 1997 post-hearing conference, Entergy Gulf States, Inc. (EGS) promised the High Load Factor Commercial Customer Group (HLFCCG) that it would supply tapes from its Distribution Dispatch Center for the period from 11 January 1997 through 20 January 1997 and for the month of July 1997. On 28 October 1997, HLFCCG notified the undersigned that EGS had not yet provided the tapes. Because the hearing will begin next week, EGS is hereby ordered to deliver the tapes to HLFCCG no later than 10:00 a.m. Thursday, October 30.

SIGNED AT AUSTIN, TEXAS the 29<sup>th</sup> day of October 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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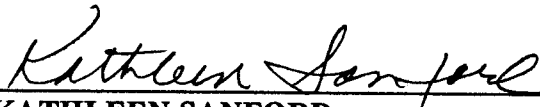
ORDER NO. 141  
GRANTING GENERAL COUNSEL'S  
MOTION TO SUPPLEMENT REPLY BRIEF

On 5 November 1997, the General Counsel filed a motion asking that he be allowed to supplement his reply brief on the issue of financial integrity separate from a discussion of financial integrity in the cost of equity section. This request followed Entergy Gulf States, Inc.'s (EGS) placing a separate section in its briefs regarding financial integrity.

No party has objected to the General Counsel's request. The motion is granted. General Counsel may supplement his reply brief by 15 December 1997.

SIGNED AT AUSTIN, TEXAS the 25<sup>th</sup> day of November 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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**SOAH DOCKET NO. 473-96-2285**  
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<b>APPLICATION OF ENTERGY TEXAS</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
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**ORDER NO. 144**  
**CITIES' MOTION FOR RECONSIDERATION**  
**AND CLARIFICATION OF ORDER NO. 143**

Cities filed a motion for limited reconsideration of Order No. 143, in which Cities asked the Administrative Law Judge (ALJ) to change the ruling regarding the EOI work orders found at Entergy Gulf States, Inc. (EGS) supplemental filing on remand Exhibit KSL-2c. That is, Cities request that the work orders not be admitted for purposes of hearing. The ALJ agrees the ruling admitting the work orders is not consistent with some portions of Order No. 143 that grant motions to strike for purposes of hearing. But in deciding to admit the work orders, the ALJ determined, perhaps incorrectly, that this would give the parties an opportunity to address those work orders in their direct cases through oral direct examination. If the work orders were admitted in the rebuttal case, there would be no such opportunity. Further, EGS explained that many of the work orders were not prepared prior to filing of the EGS rate case in November 1997<sup>1</sup>; therefore, the Company could not have filed them at that time, as they did the ESI-related service requests.<sup>2</sup> In addition, the intervenors and General Counsel would have an opportunity to cross-examine EGS witnesses regarding the work orders during the rebuttal phase.

If, as Cities suggest, the parties decide not to present any direct case, then the issue is

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<sup>1</sup>EGS Response regarding supplemental remand evidence at 21 (Dec. 10, 1997).

<sup>2</sup>This, itself, raises a question about Entergy's processes. One might conclude that for the work orders to be meaningful to the process, they should be created at the time the work is ordered.

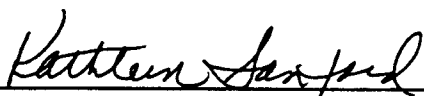
problematic because the work orders will be part of the record before the Commission and on appeal. In Docket No. 14965, the Central Power and Light Company case, the Commission permitted evidence to be filed in the remand that had been provided to parties during discovery. This situation seems similar to that, except it occurs at a time when parties can still make tactical decisions. Admitting evidence not included in EGS' direct case might deprive parties of their right to choose not to go forward. Therefore, the ALJ reverses this decision, unless intervenors or General Counsel decide to go forward with the hearing. At that time, the issue will be revisited. For now, the work orders found at KSL-2c are not admitted for purposes of hearing, except for those few that were appended to Ms. Shanks' testimony in the direct case, which Cities described as pages 1-11, 14, and 24-31 of KSL-2c, and which are already in evidence.

Understanding that the decisions related to this remand are unusual, this order is issued prior to receipt of any responses to Cities' motion to give the parties an opportunity to address this matter in their appeal of Order No. 143. While this is an evidentiary ruling, and not ordinarily subject to appeal, the due process aspects and the remand influence may create an exception, should the Commission wish to intervene in the decision.

Finally, Cities are correct, at paragraph 4 of their motion, that the summary decision is not a final decision on the issue of EOI charges. Therefore, the language on page 27 of Order No. 143, if misleading, is hereby clarified to mean that in the ALJ's opinion EGS met its burden of proof for purposes of going forward with the case on the motion for summary decision, but its case on EOI expense will be reconsidered in the ALJ's final recommendation to the Commission.

SIGNED AT AUSTIN, TEXAS the 23<sup>rd</sup> day of December 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

  
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KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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APPLICATION OF ENTERGY TEXAS	§	BEFORE THE STATE OFFICE
FOR APPROVAL OF ITS TRANSITION	§	
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REVISED FUEL FACTORS, AND TO	§	
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UNDERRECOVERED FUEL COSTS	§	ADMINISTRATIVE HEARINGS

**ORDER NO. 145  
CORRECTING TRANSCRIPT**

On December 15, 1997, the Office of Public Utility Counsel (OPC) filed corrections to the transcript in Phase IV of this proceeding. No party objected to the proposed corrections. The Administrative Law Judge approves of OPC's corrections. The court reporter shall make the corrections to the official transcript.

SIGNED AT AUSTIN, TEXAS the 29th day of December 1997.

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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

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FOR APPROVAL OF ITS TRANSITION §  
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UNDERRECOVERED FUEL COSTS § ADMINISTRATIVE HEARINGS

ORDER NO. 147  
DENYING OPC'S MOTION TO STRIKE PORTIONS  
OF EGS'S INITIAL BRIEF IN THE COMPETITIVE ISSUES PHASE

On December 30, 1997, the Office of Public Utility Counsel (OPC) moved to strike portions of Entergy Gulf States Inc.'s (EGS's) initial brief because the brief references settlements involving Houston Lighting & Power Company (HL&P), Texas Utilities Electric Company (TU), and Texas-New Mexico Power Company (TNMP). OPC objects to these references for three reasons: 1) the references are rank hearsay; 2) the references allow counsel to testify about facts not in evidence; and 3) the references are inaccurate.

On January 7, 1997, EGS responded to OPC's motion, requesting that the Administrative Law Judge (ALJ) deny OPC's motion. First, EGS claims that the references were incorporated into the brief so that the Commission would be consistent in its decision-making process regarding transition plans. Second, EGS points out that the references are policy arguments and not evidence in the record. Third, EGS argues that there is nothing objectionable about an argument that relies upon readily available information. Fourth, the existence and status of the settlements can be established by reference to Commission and SOAH Orders.

The Administrative Law Judge (ALJ) denies OPC's motion for the following reasons. First, the ALJ does not consider EGS's arguments hearsay because the statements are not evidence or facts



in this record. The ALJ will treat these statements only as policy arguments. Second, the ALJ does not see this as counsel testifying, but rather counsel is making an argument in his brief. Again, the ALJ emphasizes that these statements referencing the HL&P, TU, and TNMP settlements are not evidence to be considered in this proceeding. Third, if the statements are inaccurate, then OPC, as well as any other party, should correct the inaccuracies in the reply briefs.

The ALJ is aware of the HL&P, TU, and TNMP settlements and the status of those settlements. The ALJ will caution the parties from spending too much time and effort comparing unapproved settlements with this case. These settlements have not been approved and, as OPC states, settlements have little if any precedential value. This is a contested case with a fully developed evidentiary record. Policy arguments will be considered in the decision-making process, but the evidence will be the primary focus of the ALJ's recommendations.

SIGNED AT AUSTIN, TEXAS the 8<sup>th</sup> day of January 1998.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. O'Malley  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE

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PUBLIC UTILITY COMMISSION  
BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 149  
CONCERNING CITIES' RATE CASE EXPENSES

On this date, Entergy Gulf States, Inc. (EGS) informed the Administrative Law Judge (ALJ) that General Counsel has reviewed Cities' rate case expenses and found them to be acceptable. Therefore, no controversy exists over this issue.

To the extent, then, that EGS wants those expenses collected in rates approved in this docket, it should provide the dollars agreed to and a recommendation regarding collection, i.e. that they are to be surcharged over a certain period of time. Your assistance in this regard is appreciated, and you are requested to submit such information by February 20, 1998.

SIGNED AT AUSTIN, TEXAS the 2nd day of February 1998.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford  
KATHLEEN SANFORD  
ADMINISTRATIVE LAW JUDGE

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PUBLIC UTILITY COMMISSION  
BEFORE

APPLICATION OF ENTERGY TEXAS §  
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TO COMPETITION PLAN AND THE §  
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RECOVER A SURCHARGE FOR §  
UNDERRECOVERED FUEL COSTS §

THE STATE OFFICE OF

ADMINISTRATIVE HEARINGS

**ORDER NO. 150  
DENYING EGS'S MOTION FOR RECONSIDERATION  
OF ORDER NO. 148 REGARDING INTERIM FUEL FACTOR**

On February 2, 1998, EGS<sup>1</sup> filed its motion for reconsideration of Order No. 148, which had denied EGS's request for an interim fuel factor. Cities<sup>2</sup> and General Counsel<sup>3</sup> filed responses on February 3 and 9, respectively.<sup>4</sup> EGS asked the ALJ<sup>5</sup> to issue an interim fuel factor PFD,<sup>6</sup> General Counsel sought approval of its proposed fuel factor, and Cities opposed EGS's motion.

***EGS's Motion<sup>7</sup>***

EGS first argued that, regardless of the planned release of the main PFD in March 1998, the ALJ should issue an interim fuel factor PFD because: (1) EGS's request has been ripe for

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<sup>1</sup> Entergy Gulf States, Inc.

<sup>2</sup> City of Port Neches et al.

<sup>3</sup> General Counsel of the Public Utility Commission of Texas.

<sup>4</sup> On February 11, 1998, North Star Steel Texas, Inc. filed a response adopting the argument and position of Cities' response.

<sup>5</sup> Administrative Law Judge.

<sup>6</sup> Proposal for Decision.

<sup>7</sup> Entergy Gulf States Inc.'s Motion for Reconsideration of Order No. 148 (Phase I) (Feb. 2, 1998). Given the brevity of the pleadings on this issue, specific page citations are not given in this order.

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decision for months, (2) EGS's underrecovery has increased and is expected to increase, (3) it could be several months after March 1998 before any final fuel factor becomes effective, and (4) delay in increasing the fuel factor will harm customers, who will ultimately have to pay interest on the mounting underrecovery.

EGS next argued that, though it admittedly failed to provide evidence of its estimated purchased power expense and off-system sales for the Phase I July 1997-June 1998 forecast year (in particular, for March-June 1998), it did provide the total estimated fuel and purchased power expense for the forecast year, and one of its witnesses testified that the sum total was a reasonable estimate. In other words, though it did not complete even a first-level breakdown of estimated fuel expense, it did provide the ultimate bottom-line fuel expense number.

EGS also asked, in the alternative and in the interest of fairness, that the ALJ admit into evidence the very limited amount of uncontested information needed to fill the evidentiary gap. This additional information was provided in an affidavit attached to a December 2, 1997 pleading which EGS filed in response to the ALJ's request for information.

Finally, in response to the ALJ's finding that EGS's filing and presentation were relatively incomprehensible, EGS maintained, in essence, that it did satisfy the burden of proof, because its filing complied with the Commission's<sup>8</sup> rate filing package instructions, and because its briefs cited to necessary evidence and walked through the steps necessary to calculate the fuel factor.

### *Cities' Opposition*<sup>9</sup>

Cities responded that Order No. 148 correctly found EGS's request deficient, and that EGS's motion cited to information not in the record (the increase in underrecovery from July 1996

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<sup>8</sup> Public Utility Commission of Texas (PUC or Commission).

<sup>9</sup> Cities' Opposition to EGS's Motion for Reconsideration (Feb. 3, 1998).

through December 1997), made incorrect factual assertions (that EGS complied with the rate filing package, that it litigated the interim fuel factor, and that other parties did not oppose the interim fuel factor), and showed an expectation that the ALJ or the Commission would rescue EGS from itself.

***General Counsel's Response***<sup>10</sup>

General Counsel essentially agreed that EGS's forecast was incomplete<sup>11</sup> and was inadequate to support EGS's requested interim fuel factor, but stated that the record does include General Counsel witness Mr. Panjavan's rough estimate of forecasted expenses and revenues. General Counsel urged that Mr. Panjavan's proposed interim fuel factor be approved, given that: (1) as EGS pointed out, delay of a needed increase will increase the amount of underrecovery and interest that ratepayers must pay in the future, (2) no party disputed that the current fuel factor will result in continued underrecovery, and (3) as EGS noted, the issuance of a PFD is not the end of the story, and a final fuel factor may be many months away.

***ALJ Ruling***

The ALJ finds EGS's and General Counsel's arguments appealing -- indeed, almost all of them were considered in the ALJ's analysis in the unreleased interim fuel factor PFD. However, the ALJ nonetheless finds that it remains inappropriate to issue an interim fuel factor PFD.

In response to EGS's claim that its request has been ripe for decision for months, the ALJ agrees but again notes that the delay has been due largely to the difficulty in evaluating EGS's

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<sup>10</sup> General Counsel's Response to Entergy Gulf States, Inc.'s Motion for Reconsideration of Order No. 148 (Phase I) (Feb. 9, 1998).

<sup>11</sup> In making this point, General Counsel claimed that its witness Mr. Panjavan testified that EGS did not offer a complete forecast for the period March through June 1998. General Counsel then provided a citation (General Counsel Ex. 6 (Panjavan Direct Test.) at 11) which does not directly support the prior statement in this context, but instead refers to the fact that no forecast at all was provided for Account 565 expenses (MSS-1 expenses), access service wheeling revenues, or company service wheeling revenues. EGS requested a good cause exception to the fuel rule so as to exclude these three items from the "eligible fuel expenses" used to calculate the fuel factor.

relatively unfathomable request, which resulted in understandably confused and confusing responses by other parties.<sup>11</sup>

The ALJ understands EGS's and General Counsel's concern that EGS's underrecovery is likely to continue to increase and may ultimately harm ratepayers; the ALJ considers this to be the strongest reason to approve an increase in the fuel factor despite EGS's failure to satisfy the burden of proof. However, after: (1) reviewing the fuel reconciliation evidence, (2) observing (as Cities did) that evidence of increasing underrecovery is not in the record and (contrary to General Counsel's assertion) may be disputed by parties such as Cities, and (3) considering that parties may have contested more of the fuel factor forecast if it had been more comprehensible, the ALJ concludes that he may not recommend approval of a fuel factor revision, despite an awareness that future ratepayers may be harmed if expenses grow and if fuel reconciliation decisions do not result in significant disallowances. The ALJ is somewhat troubled by this possibility but believes that he does not have the authority to discard law in favor of equity.

As to EGS's and General Counsel's concern that a final fuel factor may be many months away, the ALJ notes that he must assume that the Commission will act quickly, that a final fuel factor will be implemented soon, and that consideration and implementation of a short-lived interim fuel factor would be an unnecessary addition to the heavy workload already borne by the Commission.

---

<sup>11</sup> For example, consider that: (1) EGS has consistently made clear its desire (but not its proof) for an interim fuel factor, (2) Cities has argued that EGS failed to litigate or abandoned its request for interim fuel factor, and (3) prior to its recent response filing, General Counsel has not (or has rarely) distinguished between the interim and the final fuel factor. It now *appears* that, in Phase I, (1) EGS initially thought the interim fuel factor was being litigated, (2) Cities thought the final fuel factor was being litigated, and (3) General Counsel thought both fuel factors were being litigated, yet did not make important distinctions between the two. In Phase IV, however, EGS did not litigate the final factor, except to address the inclusion or exclusion of nuclear fuel expense and to provide a very minimal summary of its final fuel factor evidence (EGS Ex. 188A (Monroe Supp. Direct Test. and Errata for Phase IV)), the overwhelming substance of which EGS apparently now considers to have been litigated in Phase I. This is but one of the many confusing matters which delayed drafting of the ALJ's lengthy unreleased interim fuel factor PFD and which continues to prolong drafting of the final fuel factor portion of the main PFD.

Regarding EGS's position that its case was complete because it provided the total estimated fuel and purchased power expense for the forecast year, and because one of its witnesses testified that the sum total was a reasonable estimate, the ALJ agrees with General Counsel's statement that a witness's summary statement that a very large super-class of cost or revenue projections is "reasonable" is better than nothing, but not much better. It is not sufficient to satisfy the burden of proof. Likewise, General Counsel witness Mr. Panjavan's recommendation of a value based on a few adjustments to EGS's summary number suffers from the same weakness, especially since those few adjustments are unrelated to purchased power expense and off-system sales.

The ALJ denies EGS's alternative request for admission into evidence of the very limited amount of uncontested information needed to fill the evidentiary gap, because, as noted above, the additional information is not necessarily truly uncontested, given that EGS's case was presented in a relatively impenetrable manner. If the ALJ or the Commission were "to rescue EGS from itself," as Cities put it, the other parties should be allowed to review and respond to the additional information once it has been presented more completely and comprehensibly. Given the imminence of a final decision in this case, however, admission of the additional evidence appears unwise.


Finally, the ALJ rejects EGS's claim that it did satisfy the burden of proof, because its filing complied with the Commission's rate filing package instructions, and because its briefs cited to necessary evidence and walked through the steps necessary to calculate the fuel factor. EGS's filing ultimately did not comply with the filing package instructions because of the failure to supplement the purchased power expense and off-system sales information, and because the supporting testimony was deficient, as described in Order No. 148. Furthermore, EGS's briefs did not walk through the steps necessary to calculate the fuel factor, and they lacked important citations.

***Conclusion***

Again due to the timing consideration and EGS's failure to satisfy the burden of proof, the ALJ denies EGS's motion for reconsideration of Order No. 148, which denied EGS's request for an interim fuel factor.

**SIGNED AT AUSTIN, TEXAS the 11th day of February, 1998.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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





**Public Utility Commission of Texas**

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Pat Wood, III  
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Judy Walsh  
Commissioner

Patricia A. Curran  
Commissioner

**TO: All Parties of Record**

**FROM: Steven H. Neinast**  
Assistant Director  
Office of Policy Development

**RE: PUC Docket No. 16705; SOAH Docket No. 473-96-2285; Application of Entergy Texas for Approval of its Transition to Competition Plan and the Tariffs Implementing the Plan, and for Authority to Reconcile Fuel Costs to Set to Recover a Surcharge for Underrecovered Fuel Costs**

**DATE: November 16, 1998**

Please be advised that the Commissioners have voted by individual ballot not to consider the third motions for rehearing filed in the above-referenced matter.

In accordance with Administrative Procedure Act § 2001.144<sup>1</sup> and TEX. R. CIV. P. 4, the Second Order on Rehearing becomes final and appealable on Monday, November 30, 1998. Furthermore, in accordance with paragraph 3 of the August 10, 1998 agreement between the Office of the Attorney General and Entergy Gulf States, Inc., the rates established in the Second Order on Rehearing will be effective on Friday, December 18, 1998.

cc: Commissioner's Offices

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<sup>1</sup> TEX. GOV'T CODE ANN. § 2001.144 (Vernon 1998).



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**TO:** All Parties of Record

**FROM:** Bridget Rabel *BR*  
Legal Assistant  
Office of Policy Development

**RE:** P.U.C. Docket No. 16705; SOAH Docket No. 473-96-2285 - 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 Underrecovered Fuel

**DATE:** September 30, 1998

The above referenced docket has been placed on the agenda of the October 8, 1998 Open Meeting. The Commissioners have voted by individual ballot to consider the Second Motions for Rehearing filed by Entergy Gulf States, Inc., General Counsel, Office of Public Utility Counsel, Cities, and Texas Industrial Energy Consumers.

/nh

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*Public Utility Commission of Texas*

**Memorandum**

**TO:** Chairman Pat Wood, III  
Commissioner Judy Walsh  
Commissioner Patricia A. Curran

Parties of Record

**FROM:** Steve Neinast, Assistant Director  
Office of Policy Development 

**RE:** Entergy Gulf States, Inc., Docket No. 16705  
Fuel Schedules Referenced in September 4, 1998, Order on Rehearing

**DATE:** September 9, 1998

---

The Introduction to the order on rehearing issued in Docket No. 16705 on September 4, 1998, references two fuel-related schedules that are not attached to that order. These two schedules, designated as Schedules KP-Fuel/1 and KP-Fuel/2, were attached to the July 22, 1998 order issued in this docket. The Commission did *not* change these two schedules on rehearing of the July 22 Order. For your convenience, a copy of these two schedules is attached. The filing date for motions for rehearing of the September 4, 1998, order on rehearing continues to be no later than September 24, 1998.

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DOCKET 16705 - ENERGY GULF STATES, INC.  
CALCULATION OF FIXED FUEL FACTORS  
FOR THE RATE YEAR JULY 1, 1997 - JUNE 30, 1998

1) DETERMINATION OF TEXAS ALLOCATOR

$$\begin{array}{rclcl} \text{Texas Allocator} = & \text{Texas Forecasted FFF KWh Sales @ Plant} & & 13,011,503.093 & \\ & \text{Company Adjusted Forecasted System KWh Sales @ Plant} & & 33,758,449.491 & \\ & & & & = \boxed{0.38542952} \end{array}$$

Where,

$$\begin{array}{rclcl} \text{Texas Forecasted FFF KWh Sales @ Plant}^1 = & \text{Texas Forecasted FFF KWh Sales @ Meter} & \times & \text{Loss Factor} & \\ = & 12,186,912.237 & \times & 1.067662 & \\ \text{and,} & & & & \\ = & 13,011,503.093 & & & \end{array}$$

$$\begin{array}{rclcl} \text{Company Adjusted Forecasted System KWh Sales @ Plant}^2 = & \text{Company Adjusted Forecasted System KWh Sales @ Meter} & \times & \text{Loss Factor} & \\ = & 31,808,613.304 & \times & 1.061299 & \\ = & 33,758,449.491 & & & \end{array}$$

<sup>1</sup> Forecasted FFF KWh Sales @ Meter for TX does not include the sales to Non-FFF classes SMQ, SSTS, and SUS  
WHS, MSS, and EAPS classes are not forecasted

<sup>2</sup> Total System Forecasted FFF KWh Sales @ Meter include the sales to NFFF customers in accordance with the formula approved by the Commission in Docket No. 15102

**DOCKET 16705 - ENTERGY GULF STATES, INC.  
CALCULATION OF FIXED FUEL FACTORS  
FOR THE RATE YEAR JULY 1, 1997 - JUNE 30, 1998**

**2) DETERMINATION OF TEXAS FORECASTED ELIGIBLE FUEL AND PURCHASED POWER EXPENSES**

$$\begin{array}{rcl} \text{Texas Forecasted Eligible Fuel \& Purchased Power Expenses} & = & \text{Total System Forecasted Eligible Fuel \& Purchased Power Expenses} \times \text{Texas Allocator} \\ & = & \$ \quad 593,583,231 \quad \times \quad 0.38542952 \\ & = & \$ \quad 228,784,502 \end{array}$$

**3) DETERMINATION OF TEXAS RETAIL FUEL COST FACTOR**

$$\begin{array}{rcl} \text{Texas Retail Fuel Cost Factor} & = & \frac{\text{Texas Forecasted Eligible Fuel \& Purchased Power Expenses}}{\text{Texas Forecasted FFF KWh Sales @ Meter}} \\ & = & \frac{\$ \quad 228,784,502}{12,186,912,237} = \boxed{0.018773} \end{array}$$

**4) DEVELOPMENT OF FIXED FUEL FACTORS BY VOLTAGE LEVEL**

(1)	(2)	(3)	(2) x (3)
		Texas Retail Fuel	Recommended Fixed Fuel Factor (\$/KWh)
Voltage Levels			
Loss Multipliers			
Secondary	1.029396	0.018773	1.93248
Primary	0.998516	0.018773	1.87451
69 KV and 138 KV	0.958215	0.018773	1.79885
230 KV	0.946456	0.018773	1.77678

DOCKET 16705 - ENTERGY GULF STATES, INC.  
 ALLOCATION OF FUEL OVER/(UNDER) RECOVERY BY RATE CLASS  
 FOR THE RECONCILIATION PERIOD JULY 1, 1995 THROUGH JUNE 30, 1996  
 SUMMARY  
 COMMISSION

Schedule KP-Fuel/2  
 COMMISSION REHEARING  
 Page 1 of 1

Rate Class	(1) KWh Sales @ Meter July 1995-June 1996	(2) Allocated Over/(Under) Recovery by Voltage Level
RESIDENTIAL SERVICE		
SECONDARY	4,053,162,734	(10,576,989)
TOTAL RESIDENTIAL SERVICE	4,053,162,734	(10,576,989)
SMALL GENERAL SERVICE		
SECONDARY		
SEASONAL AGRI	84,819	(103)
OTHER	162,520,040	(413,950)
TOTAL SMALL GENERAL SERVICE	162,604,859	(414,053)
GENERAL SERVICE		
SECONDARY		
SEASONAL AGRI	8,601,544	(394)
OTHER	2,218,098,710	(5,993,931)
PRIMARY		
SEASONAL AGRI	7,776,400	(14,749)
OTHER	137,369,762	(360,456)
69/138 KV	5,996,928	(19,333)
TOTAL GENERAL SERVICE	2,377,843,344	(6,388,863)
LARGE GENERAL SERVICE		
SECONDARY	416,438,594	(1,136,081)
PRIMARY	344,294,593	(854,355)
69/138 KV	64,711,186	(156,097)
TOTAL LARGE GENERAL SERVICE	825,444,373	(2,146,533)
LARGE POWER SERVICE		
PRIMARY	45,936,488	(136,616)
69/138 KV	1,643,685,112	(4,565,206)
230 KV	641,804,000	(1,716,738)
TOTAL LARGE POWER SERVICE	2,331,425,600	(6,418,560)
HIGH LOAD FACTORS SERVICE		
69/138 KV	2,257,615,510	(6,015,796)
230 KV	136,325,496	(351,104)
TOTAL HIGH LOAD FACTOR SERVICE	2,393,941,006	(6,366,900)
STREET & OUTDOOR LIGHTING		
SECONDARY	67,303,874	(195,324)
TOTAL STREET & OUTDOOR LIGHTING	67,303,874	(195,324)
TOTAL	12,211,725,790	\$ (32,507,221)

COLUMN INFORMATION	
Column	Description
(1)	Errata Workpaper GCM-3, Page 30
(2)	Source: Workpaper KP-Fuel/2 Commission , Pages 16-31



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**TO:** All Parties of Record

**FROM:** Bridget Rabel   
Legal Assistant  
Office of Policy Development

**RE:** 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 Underrecovered Fuel

**DATE:** September 28, 1998

The Commissioners have voted by individual ballot not to consider Cities' Motion to De-Classify.

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Pat Wood, III  
Chairman

Judy Walsh  
Commissioner

Patricia A. Curran  
Commissioner

**TO: All Parties of Record**

**FROM: Kathy Shockey**  
**Legal Assistant**  
**Office of Policy Development**

**RE: P.U.C. Docket No. 16705 - Application of Energy Gulf States, Inc., 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.**

**DATE: September 2, 1998**

The above referenced docket has been placed on the agenda of the September 9, 1998 Open Meeting.

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Pat Wood, III  
Chairman

Judy Walsh  
Commissioner

Patricia A. Curran  
Commissioner

**TO:** All Parties of Record

**FROM:** Bridget Rabel  
Legal Assistant  
Office of Policy Development

**RE:** Docket No. 16705 -Application of Entergy Gulf States, Inc. for Approval of its Transition to Competition 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

**DATE:** August 17, 1998

The Commissioners have voted by individual ballot to consider the Motions for Rehearing filed by Entergy Gulf States, Inc., the Office of Public Utility Counsel, North Star Steel, Inc., General Counsel, Texas Industrial Energy Consumers, Cities, and High Load Factor Commercial Customer Group at the August 26, 1998 Open Meeting. The Commissioners will not hear oral argument as requested by North Star Steel, Inc. The open meeting is scheduled to begin at 9:30 a.m. in the Commissioner's Hearing Room, 7th Floor, William B. Travis Building, Austin, Texas.

/nlh

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

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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 §

PUBLIC UTILITY COMMISSION  
OF TEXAS

ORDER CLARIFYING REFUND PROCEDURES AND REQUESTING  
COMMENTS

At its open meeting convened on August 12, 1998, the Public Utility Commission considered the "Renewed Emergency Request for Stay" filed by North Star Steel Texas, Inc. (North Star) on July 31, 1998. North Star's request seeks a stay of the Commission's July 22, 1998 order issued in this docket only "in so far as [that order] applies to North Star."<sup>1</sup>

On August 10, 1998, the Commission and Entergy Gulf States, Inc. (EGS) entered into an agreement that allows the "Historic Refunds" addressed in the July 22 order to commence immediately. Ordering Paragraph 3 of that agreement states that, with the exception of the referenced Historic Refunds, "the rates established in the [July 22] Order, including those reflected in tariff sheets, shall not become effective or enforceable until eighteen (18) days after the Order becomes final and appealable . . . ."

I.

Based on the August 10 agreement, the Commission considers North Star's request for a stay to be moot. The Commission clarifies, however, that it considers the

<sup>1</sup> North Star's Request at 1, ¶ 3.

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