orig. Docket

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. 130
RULING ON CITIES' NOTICE TO DISCLOSE EXHIBITS 148 AND 149 and CITIES' MOTION TO ADMIT AND DISCLOSE UPDATED EXHIBITS MLA-6 AND MLA-7

The Cities moved to declassify Cities' Exhibit 148 admitted under seal at the hearing in the revenue requirement phase of this docket. Entergy Gulf States, Inc. (EGS or the Company) objects to disclosure because the information contains projected earnings of all Entergy subsidiaries and disclosure to the public could provide competitors bargaining leverage over Entergy with respect to future deliveries of power and services. The estimates as to taxable income, if ultimately determined to be inaccurate, could mislead and misinform investors and damage Entergy's business position. Affidavit of Deborah S. Dudenhefer at 3-4. Cities argue they need to disclose the tax numbers because the Commission must make findings on the appropriate consolidated tax savings adjustment. Because the future tax estimates reveal that Entergy will be earning taxable income, unlike what occurred in the test year, the tax calculation required in this proceeding must include those projections. Affidavit of Michael L. Arndt at 3.

The Administrative Law Judge (ALJ) finds that Cities Ex. 148 contains trade secret information. *See* discussion of trade secrets contained in Order Nos. 81 and 95. This exhibit contains a compilation of information developed for use in Entergy's business which is not disclosed outside the business. In particular, it contains projected taxable income for all Entergy affiliates for the years 1997 through 2001.

1523

Finding that this information amounts to trade secret, the ALJ must determined whether the public's need to know the information outweighs the trade secret protections. In this instance, the projections for future years are not necessary to a fair determination of EGS' fair share of consolidated tax savings. The 1996 Entergy consolidated income tax return has been filed; EGS has agreed to declassify Cities Ex. 149 which contains Entergy's estimated taxable income for 1996; and Cities have requested that updated schedules, Exhibits MLA-6 and MLA-7, to the testimony of Cities' witness Mr. Arndt be admitted as a late-filed exhibit to reflect the 1996 tax information.

EGS objected to admission of Exhibits MLA-6 and MLA-7 because it claims there is not sufficient good cause, as required by P.U.C. PROC. R. 22.226(d), to permit admitting this evidence after close of the hearing. EGS Response filed 17 October 1997 at 2. If admitted, however, EGS does not object to declassifying the material. The ALJ finds that, because a final order in this docket will not be issued until well into 1998, at least two years after the test year, and in order to more properly reflect in the record the tax status of the companies during the rate year, the 1996 information should be available for consideration in this case.

Accordingly, the ALJ orders the following: Cities Exhibit 148, admitted at hearing, is to remain sealed; Cities Exhibit 149, admitted at hearing, is declassified; Cities Updated Exhibits MLA-6 and MLA-7, hand delivered to the ALJ and parties on 9 October 1997 under seal, are admitted and declassified.

SIGNED AT AUSTIN, TEXAS the 20th day of October 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford

KATHLEEN SANFORD
ADMINISTRATIVE LAW JUDGE

orig Book

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 UNDERRECOVERED FUEL COSTS	§	**BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS**

ORDER NO. 129
RULING ON ENTERGY GULF STATES, INC.'S OBJECTIONS TO CITIES' AND OPC'S TESTIMONY

On October 7, 1997, Entergy Gulf States, Inc. (EGS) filed objections to the testimony of Cities' witnesses Anderson and Hubbard and Office of Public Utility Counsel's (OPC's) witnesses Smith-Johannsen, Rosen, Johnson, and Moast.

Cities' Witnesses

For any request by EGS reserving the right of optional completeness, the ALJ grants the request with the limitation that any specific offer by EGS be limited to those portions of the document which bear some reasonable relationship to the portions offered by Cities. The ALJ will make this determination at the time the offer is made.

C 3 1

Steven Anderson

1. Workpapers, Excerpt from Foster Report, 8/13/97

EGS objects to this document on the ground that it constitutes hearsay pursuant to TEX. R. CIV. EVID. 801. EGS claims that Cities has failed to lay the proper foundation for its admission under any exception to the hearsay rule. EGS also claims that TEX. R. CIV. EVID. 705 does not give the witness the absolute right to disclose all underlying facts that formed the bases of his opinion. *Beavers v. Northrop Worldwide Aircraft Services, Inc.*, 821 S.W.2d 669, 674 (Tex. App.--Amarillo 1990, writ denied). The ALJ denies EGS's objection. The ALJ has reviewed the excerpt from the Foster Report and finds that it is the type of information that Dr. Anderson could reasonably rely upon in forming his opinion, and it is therefore admissible under TEX. R. CIV. EVID. 705.

OPC's Witnesses

EGS reserves the right of optional completeness under TEX. R. CIV. EVID. 106 throughout its objections for all of OPC's witnesses. OPC requests that any future offer to complete a document by EGS be limited to those portions of the document which bear some reasonable relationship to the portions offered by OPC. *Travelers Insurance Co. v. Creyke*, 446 S.W.2d 954, 957 (Tex. Civ. App.-Houston [14th Dist.] 1969, no writ). For any request by EGS reserving the right of optional completeness, the ALJ grants the request with the limitation that any specific offer by EGS be limited to those portions of the document which bear some reasonable relationship to the portions offered by OPC. The ALJ will make this determination at the time the offer is made.

Robert I. Smith-Johannsen

1. Page 15, lines 10 through 25

Mr. Smith-Johannsen quotes from a memorandum of OPD to the Commission in Project No. 15001. EGS objects to these quotations as hearsay. Furthermore, EGS states that the quoted language does not represent the official position of the Commission because these comments were cut from the final report. OPC argues that Mr. Smith-Johannsen is an expert entitled to rely upon facts or data "of a type reasonably relied upon by experts in the particular field." TEX. R. CIV. EVID. 705. Furthermore, OPC contends that the statements are admissible under TEX. R. CIV. EVID. 803(8), the Public Records and Reports exception to the hearsay rule. The ALJ agrees with OPC that the statements are of the type that this expert could reasonably rely upon and denies the objection in part. Furthermore, the statement is an exception to the hearsay rule as a public record. Under TEX. R. CIV. EVID. 803(8) reports in any form are considered public records unless the circumstances indicate a lack of trustworthiness. EGS has not shown that the circumstances indicate a lack of trustworthiness. The ALJ grants EGS's request to strike page 15, lines 24-25 because this statement is speculative, and Mr. Smith-Johannsen did not provide any evidence that he has personal knowledge on why the language was amended as required under TEX. R. CIV. EVID. 602.

Richard A. Rosen

1. Page 48, lines 2 through 6

Dr. Rosen quotes from a filing by the Pennsylvania Electric Company and Metropolitan Edison Company. EGS objects to this testimony as hearsay which OPC has failed to lay a proper foundation for its admission under any exception to the hearsay rule. OPC asserts that the information is of the type reasonably relied upon by experts in the field and is admissible under TEX. R. CIV. EVID. 703 and 705. The ALJ denies EGS's objection. The ALJ finds that the information

is of the type that Dr. Rosen could reasonably relied upon in forming his opinion on generation-related A&G costs; therefore, the information is admissible pursuant to TEX. R. CIV. EVID. 705.

2. Page 55, lines 1 through 3

Dr. Rosen quotes from an article in *The Electricity Journal*. EGS objects to this testimony as hearsay which OPC has failed to lay a proper foundation for its admission under any exception to the hearsay rule. OPC asserts that the quote form *The Electricity Journal* is a well known and respected source and relied on by experts in the field. The ALJ denies EGS's objection. The ALJ finds the quote from *The Electricity Journal* admissible pursuant to TEX. R. CIV. EVID. 705.

3. Exhibit RAR-2

This is a schedule filed on behalf of a utility other than EGS in another proceeding. EGS objects to this document as hearsay for which no hearsay exception has been established. Furthermore, according to EGS, a witness may disclose the facts underlying his opinion, but this does not give the witness the absolute right to disclose all underlying facts. *Beavers v. Northrop Worldwide Aircraft Services, Inc.*, 821 S.W.2d 669, 674 (Tex. App.--Amarillo 1990, writ denied). OPC agrees that there is no absolute right to disclose all underlying facts; however, the court is given discretion to admit evidence it believes will be helpful in evaluating the evidence. *Kramer v. Lewisville Memorial Hosp.*, 831 S.W.2d 46, 49 (Tex. App.--Fort Worth 1992), affirmed, 858 S.W.2d 397 (1993). The ALJ denies EGS's objection. The ALJ has reviewed RAR-2 and finds that it is the type of information that Dr. Rosen could reasonably rely upon in forming his opinion, and it is therefore admissible under TEX. R. CIV. EVID. 705.

Clarence Johnson

1. **Page 20, lines 10 through 11**
   Page 22, lines 7 through 10
   Page 23, line 24, through page 24, line 2
   Page 24, lines 6 through 7 and lines 10 through 12
   Page 25, lines 10 through 12
   Page 26, lines 4 through 7

According to EGS, these portions of Mr. Johnson's testimony either state what OPC believed the stipulation in Docket No. 11292 meant or speculate about what the other parties thought or intended. EGS objects to this testimony on the grounds that it is irrelevant, speculative, and contrary to the parol evidence rule.

OPC argues that the information is relevant because it addresses Issue No. 1 in the Commission's Preliminary Order. That question asks whether EGS's proposal is consistent with the Docket No. 11292 stipulation. OPC states that the information is not speculative because Mr. Johnson was intimately familiar with OPC's expectations at the time of the stipulation in Docket No. 11292. According to OPC, these statements are based on Mr. Johnson's expertise and personal knowledge. In certain instances, Mr. Johnson seems to be talking about the expectations of other parties. OPC has agreed to amend certain portions of Mr. Johnson's testimony to clarify that Mr. Johnson speaks only for OPC. OPC also argues that the testimony is not contrary to the parol evidence rule. OPC states that Mr. Johnson does not seek to vary the terms of the stipulation but instead urges the Commission to honor the commitments contained in the stipulation.

The ALJ grants EGS's objections. The ALJ declines to admit any evidence which attempts to interpret or state the intended believes of any party at the time of the Docket No. 11292 stipulation. The stipulation speaks for itself. The parol evidence rule excludes oral evidence

contemporaneous with or prior to a valid, unambiguous, written instrument, complete on its face, except for instances of fraud, mistake, accident or ambiguity. *Rayburn v. Equitable Life Assurance Soc'y of the U.S.*, 805 F.Supp. 1401 (S.D.Tex. 1992); *Tripp Village Joint Venture v. MBank Lincoln Ctr.*, 774 S.W.2d 746 (Tex. App.—Dallas 1989, writ denied). Mere disagreement over the interpretation of a document does not make it ambiguous. *Maxwell v. Lake*, 674 S.W.2d 795 (Tex. App.—Dallas 1984, no writ). Under *Rayburn* and related cases, evidence to explain, vary, add to, or contradict terms of a valid agreement is inadmissible. Since the Settlement Agreement is a written instrument, complete on its face, and since Mr. Johnson does not speak to any fraud, accident or mistake surrounding the agreement, the select portions of Mr. Johnson's testimony constitute extrinsic oral evidence prohibited by the parol evidence rule. OPC's believes concerning the settlement are immaterial absent fraud, accident, or mistake. *Murphy v. Dilworth*, 151 S.W.2d 1004, 1005-6 (Tex 1941).

2. Page 45, lines 6 through 25

In this testimony, Mr. Johnson quotes from an article in the *AntiTrust Bulletin*. EGS objects to this testimony as hearsay and no exception to the hearsay rule has been established. Furthermore, according to EGS, a witness may disclose the facts underlying his opinion, but this does not give the witness the absolute right to disclose all underlying facts. *Beavers v. Northrop Worldwide Aircraft Services, Inc.*, 821 S.W.2d 669, 674 (Tex. App.--Amarillo 1990, writ denied). OPC agrees that there is no absolute right to disclose all underlying facts; however, the court is given discretion to admit evidence it believes will be helpful in evaluating the evidence. *Kramer v. Lewisville Memorial Hosp.*, 831 S.W.2d 46, 49 (Tex. App.--Fort Worth 1992), affirmed, 858 S.W.2d 397 (1993). The ALJ denies EGS's objection. The ALJ has reviewed the information and finds that it is the type of information that Mr. Johnson could reasonably rely upon in forming his opinion, and it is therefore admissible under TEX. R. CIV. EVID. 705.

3. Attachment 1

EGS objects to this document as hearsay and no hearsay objection has been established. Furthermore, according to EGS, a witness may disclose the facts underlying his opinion, but this does not give the witness the absolute right to disclose all underlying facts. *Beavers v. Northrop Worldwide Aircraft Services, Inc.*, 821 S.W.2d 669, 674 (Tex. App.--Amarillo 1990, writ denied). OPC agrees that there is no absolute right to disclose all underlying facts; however, the court is given discretion to admit evidence it believes will be helpful in evaluating the evidence. *Kramer v. Lewisville Memorial Hosp.*, 831 S.W.2d 46, 49 (Tex. App.--Fort Worth 1992), affirmed, 858 S.W.2d 397 (1993). The ALJ denies EGS's objection. The ALJ has reviewed the article and finds that it is the type of information that Mr. Johnson could reasonably rely upon in forming his opinion, and it is therefore admissible under TEX. R. CIV. EVID. 705.

Patrick Moast

1. Page 10, line 16 through page 11, line 9 and Exhibits PJM-CI-2 and -3

EGS objects to this testimony and documents, which are press releases and quotations therefrom, as hearsay in which no proper foundation for their admission as an exception to the hearsay rule has been established. Furthermore, according to EGS, a witness may disclose the facts underlying his opinion, but this does not give the witness the absolute right to disclose all underlying facts. *Beavers v. Northrop Worldwide Aircraft Services, Inc.*, 821 S.W.2d 669, 674 (Tex. App.--Amarillo 1990, writ denied). OPC agrees that there is no absolute right to disclose all underlying facts; however, the court is given discretion to admit evidence it believes will be helpful in evaluating the evidence. *Kramer v. Lewisville Memorial Hosp.*, 831 S.W.2d 46, 49 (Tex. App.--Fort Worth 1992), affirmed, 858 S.W.2d 397 (1993). The ALJ denies EGS's objection. The ALJ has reviewed the information and finds that it is the type of information that Mr. Moast could reasonably rely upon in forming his opinion, and it is therefore admissible under TEX. R. CIV. EVID. 705.

2. Page 16, line 17 through page 17, line 14 and Exhibit PJM-CI-6
Page 27, lines 11 through 23, and Exhibit PJM-CI-7

EGS objects to this testimony and documents, which are articles and quotations therefrom, as hearsay in which no proper foundation for their admission as an exception to the hearsay rule has been established. Furthermore, according to EGS, a witness may disclose the facts underlying his opinion, but this does not give the witness the absolute right to disclose all underlying facts. *Beavers v. Northrop Worldwide Aircraft Services, Inc.*, 821 S.W.2d 669, 674 (Tex. App.--Amarillo 1990, writ denied). OPC agrees that there is no absolute right to disclose all underlying facts; however, the court is given discretion to admit evidence it believes will be helpful in evaluating the evidence. *Kramer v. Lewisville Memorial Hosp.*, 831 S.W.2d 46, 49 (Tex. App.--Fort Worth 1992), affirmed, 858 S.W.2d 397 (1993). The ALJ denies EGS's objection. The ALJ has reviewed the information and finds that it is the type of information that Mr. Moast could reasonably rely upon in forming his opinion, and it is therefore admissible under TEX. R. CIV. EVID. 705.

SIGNED AT AUSTIN, TEXAS the 17th day of October 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. O'Malley

MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE

State Office of Administrative Hearings

Shelia Bailey Taylor
Chief Administrative Law Judge

October 13, 1997

TO: Pat Wood, III, Chairman, Public Utility Commission
Commissioner Judy Walsh

All Parties of Record

RE: General Counsel's Motion for Partial Summary Decision in PUC Docket No. 16705, SOAH Docket No. 473-96-2285, Application of Entergy Texas for Approval of Its Transition Plan, Etc.

Attached hereto is Order No. 124 which directs judgment in this docket regarding affiliate expenses. Because this issue is of great interest to the parties and to the Commission, I am certifying the ruling for the Commission's review.

At a post-hearing conference on October 7, I advised the parties I would issue the order this afternoon unless I heard from them that they had been able to settle these issues or advising me not to issue the order. Today I received letters from four parties, EGS, the Cities, OPC, and the General Counsel. Only EGS asked that the order not be issued while the parties are trying to reach a global settlement. All other parties requested a ruling today.

I have decided to issue the ruling in light of the fact that the General Counsel has requested a ruling on his motion, and because the motion is ripe for ruling.

Because of the press of time, I repectfully request that this matter be placed on the October 22 open meeting. The parties are instructed at page 2 of the order to file responses by noon on Friday, 17 October 1997. Your attention herein is appreciated.

Sincerely,

Kathleen Sanford
Administrative Law Judge

pc: PUC Central Records
PUC Office of Policy Development

Post Office Box 13025 ◆ William P. Clements Building 300 West 15th Street, Suite 502 ◆ Austin Texas 78711-3025
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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 UNDERRECOVERED FUEL COSTS	§	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

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ORDER NO. 124
RULING ON GENERAL COUNSEL'S MOTION FOR PARTIAL SUMMARY DECISION

I. Introduction

At the close of Entergy Gulf States, Inc.'s (EGS' or the Company's) direct case, during the hearing on the merits in the Revenue Requirement Phase of this docket, the General Counsel presented a motion for partial summary decision pursuant to P.U.C. PROC. R. 22.182. It alleges that EGS failed to meet its burden of proof under PURA[1] §36.058 regarding affiliate expenses, which include charges from Entergy Services, Inc. (ESI) and Entergy Operations, Inc. (EOI) to EGS. The General Counsel argues that because EGS did not provide sufficient information to satisfy the minimum requirements of PURA §36.058, the direct evidence does not establish that EGS is entitled to recover its affiliate expenses, and further that, based on that direct evidence, the Public Utility Commission of Texas (Commission or PUC) can not make the statute's required findings (1) as to the reasonableness and necessity of each item or class of items of affiliate expense and (2) that the prices paid by EGS to affiliates were no higher than the prices charged to other affiliates.

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[1]Effective 1 September 1997, PURA95 §2.208(b) became §36.058 of the Public Utility Regulatory Act, 75th Leg., R.S. ch. 166, §1, 1997 Tex. Sess. Law Serv. 713 (Vernon), to be codified at TEX. UTIL. CODE ANN. §§11.001-63.063 (PURA). Even though the EGS application and evidence reference §2.208(b), this order uses the new and current section designation.

The parties interested in affiliate issues, namely the Office of Public Utility Counsel (OPC) and the Cities, responded orally at the hearing that they supported the motion in full, including the General Counsel's request to suspend further testimony or other evidence regarding affiliate charges pending a ruling on the motion. The Administrative Law Judge (ALJ) did suspend further hearing on affiliate expenses following the Company's direct case. As this order discusses, EGS failed to provide evidence that would support findings required by PURA §36.058; therefore, the motion for partial summary decision is granted. This ruling is hereby certified to the Commission for review. Under P.U.C. PROC. R. 22.127, parties have 13 days from issuance of this order to file a response with the Commission. So that the Commission may take up this matter at its October 22 open meeting, the ALJ finds good cause to abbreviate that time period, and parties shall file responses no later than noon on Friday, 17 October 1997.

II. Issues of Procedure and Proof

A. Authority to Issue Summary Decision/Legal Standard

The Commission's authority to issue summary decisions is found at P.U.C. PROC. R. 22.182 which states:

> The presiding officer may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, material obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.[2]

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[2]P.U.C. PROC. R. §22.182(a).

The parties identified cases in which the Commission has previously affirmed its authority to enter summary decisions.[3]

General Counsel compares this rule with Tex. R. Civ. Proc. 166a, motion for summary judgment, and Rule 268, motion for directed verdict, and asserts that directed verdict (directed judgment where no jury) procedure is most fitting. A directed verdict may be granted if the evidence does not raise a fact issue on one or more elements that the party must establish to be entitled to judgment, and where no verdict other than the one requested can properly be sustained.[4]

EGS points out that the language in P.U.C. PROC. R. 22.182 tracks the language in Tex. R. Civ. Proc. 166a(c) permitting the moving party judgment as a matter of law when there is no genuine issue as to any material fact, and therefore summary judgment law prevails. EGS claims the Commission must find that it presented no evidence of the reasonableness and necessity of its affiliate expenses in order for the General Counsel to prevail on his motion.

It appears to the ALJ that this decision is a directed judgment, although aspects of summary

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[3](Cities filed a supporting pleading on 15 August 1997; EGS filed a response to General Counsel's motion on August 22; and General Counsel and OPC filed reply pleadings on September 26.) *See Application of City of Castroville to Amend Certificated Areas Service Boundaries*, Docket No. 6265, 13 P.U.C. BULL. 1059 (Jan. 28, 1987) partially granting a motion for summary judgment where applicant failed to plead facts showing that electric cooperative was in violation of PURA; *Application of Texas Utilities Electric Company for Approval of its Notice of Intent*, Docket No. 10400, 18 P.U.C. BULL. 638 (Jan. 24, 1992) denying motion for summary disposition to dismiss application which sought Notice of Intent approval for more than one plant.

It should be noted that these cases pre-date the adoption of the substantive rule, which occurred on 28 September 1993, *See* 18 Tex. Reg. 6641.

[4]*See Hyman Farm Serv., Inc. v. Earth Oil & Gas Co.*, 920 S.W.2d 452, 455 (Tex.App.--Amarillo 1996, n.w.h.); *Charter International Oil Company v. Tolson Oil Company*, 720 S.W.2d 165 (Tex.App.--Austin 1986, no writ); and *Yarbrough v. Phillips Petroleum Company*, 670 S.W.2d 270 (Tex.App.--Houston [1st Dist.] 1983, writ ref'd n.r.e.).

judgment apply.[5] The substantive rule captures the summary judgment requirement that there be no genuine issue as to any material fact. This does not mean, however, as EGS asserts, that in order to grant the motion the Commission must find that EGS presented *no* evidence on the reasonableness or necessity of its affiliate expenses. It means that, based on the evidence EGS did present, in order to grant the motion, the Commission can find, as a matter of law, that EGS did not meet its burden to prove the reasonableness and necessity of each item or class of items of affiliate expense *and* that the prices charged to EGS are not higher than those charged to other affiliates for the same services. EGS argues that judgment "as a matter of law" means the judge is not permitted to weigh the sufficiency of the evidence or assess the credibility of witnesses.[6] However, under the Commission's rule, evidence may be considered, which means that the sufficiency of such evidence is vital to a decision. EGS presented a full record and rested its case. Once that happens, an order directing judgment is based on the legal sufficiency of the evidence to show a *prima facie* case.[7] In addition, under summary judgment law, all doubts about the existence of a genuine issue as to a material fact must be resolved against the moving party.[8] The ALJ has attempted to resolve all such doubts in that manner.

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[5]*Texas Register* notice containing the preamble to P.U.C. PROC. R. 22.182 is silent regarding whether summary judgment or directed verdict procedure is incorporated into the rule. *See* Preamble attached to EGS Response at Attachment C.

[6]*Gulbenkian v. Penn*, 252 S.W.2d 929, 932 (Tex. 1952). It is also true that the evidence which tends to support the position of the party opposing the motion must be accepted as true. *See Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548 (Tex. 1985).

[7]*Charter International*, 720 S.W.2d at 169.

[8]*Gulbenkian* at 931. *Gonzalez v. Mission American Ins. Co.*, 795 S.W.2d 734, 736 (Tex. 1990). A fact issue arises when conflicting inferences may be drawn from even uncontroverted summary judgment evidence. *Ridgeline, Inc. v. Crow-Gottesman-Shafer No. 1*, 734 S.W.2d 114, 116-17 (Tex.App.--Austin 1987, no writ).

The statute explicitly requires that the Commission make specific findings of fact; it states:

(a) Except as provided by Subsection (b), the regulatory authority *may not allow as capital cost or as expense* a payment to an affiliate for:

(1) the cost of a service, property, right, or other item; or
(2) interest expense.

(b) The regulatory authority may allow a payment described by Subsection (a) *only to the extent that the regulatory authority finds the payment is reasonable and necessary for each item or class of items as determined by the commission.*

(c) A finding under Subsection (b) must include:

(1) a specific finding of the reasonableness and necessity of each item or class of items allowed; and
(2) a finding that the price to the electric utility is not higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

(d) In making a finding regarding an affiliate transaction, including an affiliate transaction subject to Chapter 34, the regulatory authority shall:

(1) determine the extent to which the conditions and circumstances of that transaction are reasonably comparable relative to quantity, terms, date of contract, and place of delivery; and
(2) allow for appropriate differences based on that determination. (Emphasis added.)[9]

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[9]PURA §36.058. The language contained in §2.208(b) is substantively the same: Payment to affiliated interests for costs of any services or any property, right, or thing or for interest expense may not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the commission. Any such finding shall include specific findings of the reasonableness and necessity of each item or class of items allowed and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items or to unaffiliated persons or corporations. In making such findings regarding affiliate transactions, including affiliate transactions subject to Section 2.051 of this Act, the regulatory authority shall make a determination regarding the extent to which the

The ALJ concludes that for EGS to meet its burden of proof, the evidence it produces must be of such a nature to permit the Commission to make the required findings of fact. If it does not, then under the statute no costs related to affiliate payments may be allowed, and under summary judgment there would be no genuine issue as to a material fact. Therefore, in considering the General Counsel's motion, the presiding officer must review the evidence to determine (1) whether it contains enough information to support the statutorily required findings and (2) whether the information in the record provides a mechanism for making such findings.

EGS cites several cases which support the proposition that the burden of proof is a shifting phenomenon. That is true; once the applicant or complainant produces the evidence, establishes a *prima facie* case, the burden of going forward shifts to the party challenging the case.[10] That applies here, as well; EGS must make a *prima facie* showing going forward before the burden of persuasion shifts to other parties. If it has not made such a case, the burden does not shift.

B. The Commission's Rate Filing Package (RFP)

EGS contends that if it presents its case as instructed in the Commission's rate filing package (RFP) instructions, it will by default meet its burden of proof unless a party challenges its application as materially deficient, materially non-compliant with the RFP. EGS Response at 12. EGS cites

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conditions and circumstances of such transactions are reasonably comparable relative to quantity, terms and conditions, date of contract, and place of delivery and allow for appropriate differences based on that determination.

[10] *See Application of Texas-New Mexico Power Co. for Authority to Change Rates and Application of Texas-New Mexico Power Co. for Deferred Accounting Treatment for TNP One-Unit Two* (Second) Order on Rehearing, Conclusion of Law 15, 19 P.U.C. BULL 89, 629 (Mar. 18, 1993); *Complaint of Sunmeadow Community Improvement Assoc. of Friendswood, Texas Against Southwestern Bell Telephone Co.*, Docket No. 11253, Order No. 12 and Order on Appeal, 18 P.U.C. BULL. 1495 (Dec. 29, 1992 and Feb. 26, 1993).

Commission dockets as support for this position.[11]

The ALJ concludes that the *Wood County* case is simplistic in relation to the complexity of affiliate issues raised by the EGS application and is not appropriate precedent for this case. In fact, *Wood County* apparently did not involve payments to affiliates. EGS' argument on the RFP issue is not persuasive because the filing of a case, even if in compliance with the RFP, is not enough; the utility must prove the prudence and reasonableness of its expenditures. The mere fact that a company opens its books to inspection does not permit it to enjoy a presumption that the expenditures reflected in those books have been prudently incurred.[12] And so it is with regard to affiliate expenses.

The Commission's RFP requires utilities to file certain kinds of information with their application to revise rates. The requirements concerning affiliate expenses are found at §§G-6, G-6.1, and G-6.2 of the RFP. A copy of those RFP instructions, admitted in this proceeding as Official Notice Ex. 1, is attached hereto as Attachment 1. It is readily apparent from a review of these sections, that the RFP does not require a utility to file its evidence in accordance with the statutory standard found in PURA §36.058. Therefore, if a utility provided the information in the format required by the RFP, its application would not be materially deficient under the RFP, but would not necessarily be sufficient under the statute.

III. Compliance with Affiliate Standards

In prior dockets addressing affiliate expenses, the Commission has applied the standard

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[11] *Application of Wood County Electric Cooperative*, Docket Nos. 6735 and 6790, 12 P.U.C. BULL. 763, 772 (Aug. 26, 1986) cited in *Application of Central Power and Light Company for Authority to Change Rates*, Docket No. 14965, Proposal for Decision on Remand, Conclusion of Law 1, Aug. 5, 1997). It is relevant that the Commission did not adopt the conclusions of law contained in the proposal for decision (PFD) on Remand. Order on Rehearing, Aug. 27, 1997, at 11 of 112.

[12] *Coalition of Cities v. Public Util. Comm'n.*, 798 S.W.2d 560, 563 (Tex. 1990).

established in PURA and in case law.[13] In *Rio Grande*, the court held that to meet its burden of proof the utility must at least show the following:

> 1. The prices it was charged by its affiliate were no higher than the prices charged by the supplying affiliate to its other affiliates.
>
> 2. Disallowable expenses (*i.e.*, legislative advocacy, donations, entertainment, advertising products marketed by other subsidiaries, etc.) were not included in expenses allocated to the utility.
>
> 3. Each item of allocated expense was reasonable and necessary.
>
> 4. The allocated amounts reasonably approximate the actual cost of services to it.[14]

EGS witnesses testified that the purpose of their affiliate testimony was

> to support the reasonableness of the allocation of those [affiliate] costs, and [to] look at the reasonableness of the *total* level of costs for all of those services.

Tr. at 5802-5803 (emphasis added). The General Counsel and the Cities contend such is contrary to the approach required by PURA to determine the reasonableness and necessity of *each item or class of items* of EGS' affiliate expenses. The Commission is required to follow the statutory standard. Texas courts have held that the Commission is precluded from using non-statutory factors in making its decisions, and under the APA[15], to do so amounts to an arbitrary and capricious action.[16]

EGS contends that the affiliate standard is no *higher* or more onerous than that affecting any

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[13]*Railroad Commission of Texas v. Rio Grande Valley Gas Company*, 683 S.W.2d 783 (Tex.App.-Austin 1984, no writ) (hereafter *Rio Grande).*

[14]*Id.* at 786.

[15]Administrative Procedure Act, TEX. GOV'T. CODE ANN. § 2001.051 (Vernon 1997)

[16]*See PUC v. South Plains Electric Cooperative,* 635 S.W.2d 954, 957 (Tex.Civ.App.--Austin 1982, writ ref'd n.r.e.), where the court stated, "an agency's consideration of a non-statutory standard amounts to arbitrary and capricious action requiring reversal."

other expense. It argues correctly that PURA does not require the regulatory authority to find payments to affiliates to be more reasonable and necessary than are non-affiliated expenses. EGS Response at 14. Nevertheless, the statute does raise several questions:

A. Because it requires findings as to each item or class of items, what constitutes a "class of items"?

B. Because the statute states that affiliate expense "may not be allowed . . . except to the extent that . . .", does this mean there is no rebuttable presumption based on presentation of evidence by the utility as there is for other kinds of costs? What constitutes sufficient evidence? Is it enough for the Commission to rely on the utility's bald assertions made by its experts in testimony that the expenses are reasonable and necessary? Or must it be able to make some independent analysis?

C. What kind of evidence is necessary in the Company's direct case, that would permit the Commission to find as a matter of law that affiliate expenses charged to EGS are no higher than those charged to other affiliates?

A. Class of Items

Commission precedent has defined "class of items" to be various things. The class has consisted of either the class of *all* affiliate expenses or all expenses from *each affiliate,* or some sub-class or grouping of expenses. EGS argues that only in considering disallowances has the Commission made a discrete review of costs by item or categories. This assertion, however, was not borne out most recently in the Commission's decision regarding CPL's expenses where the Commission both approved and disallowed expenses on a category or class of items basis.[17]

Nevertheless, EGS identified several cases in its response to the motion for partial summary decision at pages 17 through 22 which support the theory that a class of items can be the total of all

[17] *See, e.g.,* Order on Rehearing at Findings of Fact Nos. 62A through 62H where the Commission used allocation factors to designate classes of items.

affiliate expenses, or can be categorized by affiliate as the total of each affiliate's expenses.[18] In particular, in Docket No. 9850 the Commission decided that HL&P had sustained its burden of proof based on the fact that Houston Industries (1) charged the actual cost of providing services with no profit or return; (2) charged the actual costs for providing services consistently to each affiliate receiving a given service; (3) allocated expenses based on cost causation; (4) used the same allocation method to allocate costs to each affiliate that received a service, and (5) used budgeting approval processes to control the level of costs.[19]

In other instances, the Commission did review affiliate costs based on categories.[20]

Neither proof by an aggregate finding as to total expenses or total expenses for each affiliate appears to be viable in this docket, as EGS has only two affiliates, ESI and EOI, that billed costs to EGS. Because so many services are provided by these two affiliates (*See* EGS Ex. 901 at LEB-3), the quantity and diversity of these costs is enormous and involve about two thousand items billed

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[18]EGS relies on the following cases: *Application of Houston Lighting and Power Company for Authority to Change Rates*, Docket No. 9850, 17 P.U.C. BULL 3063 (Oct. 23, 1991), which case was a contested settlement; *Application of GTE Southwest, Inc. for a Rate Increase*, Docket No. 5610, 15 P.U.C. BULL 1 (Feb. 23, 1989) where the Commission reviewed the affiliate expenses for each affiliate, of which there were seven. In contrast, EGS affiliate expenses were billed by only two affiliates and include hundreds, if not thousands of charges per affiliate; *Inquiry of the General Counsel into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Co.*, Docket Nos. 8585 and 8218, 17 P.U.C. BULL 1711 (Nov. 27, 1990) where again the findings were grouped by SWB's then seven affiliates.

[19]17 P.U.C. BULL. at 3185-3187; Findings of Fact Nos. 131, 135, & 136 at 3398.

[20]*Petition of the General Counsel to Inquire into the Reasonableness of the Rates and Services of Southwest Texas Telephone Company*, Docket No. 9983, 18 P.U.C. BULL. 803, Aug. 14, 1992, Examiner's Report at 18 P.U.C. BULL. 858, Conclusions of Law, 22, 23, & 24, 18 P.U.C. BULL. 931-932. *See also Petition of the General Counsel to Inquire into the Reasonableness of the Rates and Services of Central Telephone Company of Texas*, Docket No. 9981, 19 P.U.C. BULL. 929 (Sept. 8, 1993), Conclusions of Law 15, 16 & 17, 19 P.U.C. BULL 1220-1221.

during the test-year period.

It would be impossible for the fact finder to review each item and attempt to make the statutory findings as to each item. The ALJ concludes the Commission must make its findings based on a "class of items" basis. Had EGS provided an analysis by categories, such as by Federal Energy Regulatory Commission (FERC) accounts, by allocation factors, or by functional groups, the Commission's review process may have been manageable. It did not do this. Instead, EGS chose to provide its "reasonable and necessary" evidence based on the totality of costs. To make a finding based on total affiliate costs, the Commission is obliged to accept the Docket No. 9850 standard and look only at the adequacy of the process as a whole.

B. The Evidentiary Presumption and Commission Findings

1. Presumption

Under the statute, all affiliate expenses must be disallowed unless the Commission can make the findings as to reasonableness and necessity of affiliate costs. If, for example, no party filed evidence controverting the Company's direct case on affiliate issues, except to plead that it had not met its burden of proof under PURA §36.058, then no other evidence would exist in the record to make the utility's case for it; the Commission then must base its findings solely on the evidence the utility offered.[21]

The theory underlying the General Counsel's and the Cities' position is that, for all other kinds of expenses, the Company enjoys a presumption that the evidence it offers constitutes just and reasonable rates under provisions of PURA, but that §36.058 contains no such presumption; instead it presumes a disallowance of all affiliate costs. As EGS witness Mr. Bernard Uffelman testified at

[21]Although intervenor and staff evidence has been prefiled, those parties have not offered into the record in this case any evidence regarding affiliate costs.

hearing, the Texas statute reverses a presumption that historical test year expense is prudent and reasonable and, referencing Docket No. 8585[22], the utility must meet prudent and reasonable standards for affiliates before those costs are allowed in cost of service. Tr. at 5692. In effect, if the utility wants to recover its affiliate expenses, it must first rebut the presumption that all those expenses are disallowed. To do so it must provide a way for the Commission to make the necessary findings based on its direct case. The standard is different with regard to affiliate expenses than it is for other items of expense in the utility's cost of service, where no such *disallowance* proscription exists.

2. Precedent

The Commission adopted the *Rio Grande* standard in various dockets. In Docket No. 9983, the ALJ's recommendation regarding the standard was as follows:

> In the ALJ's opinion a demonstration of the reasonableness and necessity of affiliate payments also includes a showing that: (a) the service for which payment was made is necessary to the utility's operations and not duplicative of service performed in-house; (b) that the service or product for which payment was made could not have been reasonably performed or developed in-house (*i.e.*, a showing of whether in-house capability exists, and if so, a showing that such was not used because it was less expensive to utilize the services of the affiliate; and where in-house capability does not exist, a showing that the affiliate's services were less expensive and of equal quality to that which could be obtained on the open market); and that (c) the level or amount of the expense is [in] fact reasonable.
>
> The burden is indeed a difficult one to meet, however, the court addressed the rationale for that burden in the *Rio* case. The court noted that while payments associated with arm's length transactions may be deemed reasonable and allowable absent a showing that they are imprudent, unreasonable, or out of line, such is not the case with regard "to payments to affiliates about which the legislature has its suspicion and which to any reasonable mind are clearly tainted with the possibility of self-dealing." *Rio [Grande]* at 796. Thus, to recover these costs through its rates a utility

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[22]*Inquiry of the General Counsel Into the Reasonableness of the Rates and Services of Southwestern Bell Telephone Company*, Docket No. 8585, 17 P.U.C. BULL. 1045 (Nov. 29, 1990).

must essentially eliminate this taint with respect to the specific payments at issue.[23]

It should be noted, that the level of affiliate expenses requested by Southwestern Public Service in Docket No. 9983 was minuscule compared with the instant docket. In that case, the utility was permitted to recover $56,640 and denied recovery of $4,758.[24] In this case, EGS seeks recovery of approximately $200 million in affiliate expenses, about $82 million in its Texas jurisdiction, according to its accounting contained in its Response at 5, Attachment B.

This issue has mushroomed in the last several years as a result of utility mergers and consolidation of resources and utilities' efforts to reduce costs in anticipation of deregulation and increased competition. Because the affiliate issue is more prominent than ever, the heavy duty imposed by the statute to bring forward sufficient evidence to make the requisite findings must be considered.

In its original order in the CPL case, Docket No. 14965, the Commission concluded that CPL had not met its burden to prove the affiliate expenses charged to CPL were reasonable and necessary. Order at 4. The Commission then explained its findings saying that it intended to revise the ALJ's findings of fact to represent, "in part, a new and higher level of policy concern for affiliate abuses . . .." Order at 7. The Commission concluded that the probative value of testimony provided by CPL in rebuttal was diminished "because CPL did not provide this information in a timely manner, so that General Counsel and intervenors could adequately test the information presented by CPL." Order at 12. The Commission then disallowed a large amount of affiliate expenses because CPL had not met the burden of proof based on that diminished probative value.

In its decision on rehearing, which reconsidered all affiliate expenses, the Commission

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[23]Docket No. 9983, 18 P.U.C. BULL. at 859.

[24]*Id.* at Conclusions of Law 56 & 57, 18 P.U.C. BULL. 922.

addressed the PURA §36.058 requirements. After reciting the statutory requirements, the Commission explained:

> The consolidation of functions in the service company undoubtedly permits CSW to achieve economies of scale and reduce the cost of performing these functions. This consolidation makes it more difficult, however, for a regulatory agency to determine the appropriate level of costs that may be charged to utility customers. The difficulty of determining an appropriate allocation of indirect costs to the regulated utilities is compounded by the fact that CSW has affiliates that are engaged in business in competitive markets. The Commission is concerned that the allocation of costs, if not carefully scrutinized and fully justified, may result in utility customers over-paying for some services, thereby supporting the efforts of the unregulated affiliates to conduct business in competitive markets.[25]

The Commission then described its "new policy"--a heightened concern for potential affiliate abuses, and a preference for direct billing of expenses from an affiliate to a utility and for the use of competitive bids in contracting for services performed by affiliates.[26] In its response to the motion for partial summary decision, EGS demurs at an agency adopting a new policy during a contested case without affording parties an opportunity to introduce evidence complying with the new policy.[27] Response at 24.

Even so, while the Commission described this as a new policy, it seems to the ALJ that it should have been obvious to EGS, as it prepared its case, that its complex affiliate structure must be easily scrutable in order for the Commission to meet *its* statutory burden to find that classes of affiliate expenses are reasonable and necessary and do not improperly burden the regulated side of the corporate business. EGS should have known, before it filed this case, that it must facilitate such regulatory review.

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[25]Docket No. 14965, Order on Rehearing at 5 of 112, Aug. 21, 1997.

[26]*Id.* at 11 of 112.

[27]*Texas State Board of Pharmacy v. Seely,* 764 S.W.2d 806, 814-815 (Tex.App.--Austin 1988, writ denied); *Madden v. Texas Board of Chiropractic Examiners*, 663 S.W.2d 622, 626-27 (Tex.App.--Austin 1983, writ ref'd n.r.e.)

3. Necessary Evidence

EGS appears to rely on the examiner's statements in Docket No. 9850 that neither PURA, *Rio Grande,* nor this Commission requires a utility to perform cost studies or obtain internal or external audits to establish the reasonableness or necessity of the provision of centralized services. Instead, the examiner there held that the control processes, budget and authorization and approval *processes,* were sufficient mechanisms to ensure that the utility was charged reasonable costs for services provided by the service company in that case, the parent, Houston Industries.[28] The Commission confirmed this in Finding of Fact No. 131.[29]

EGS points out that the court has upheld findings based on an examination of allocation methods which revealed that costs were reasonable and no higher than costs to other affiliates.[30] And, because EGS has demonstrated, in general, that cost savings have occurred since the merger with Entergy Corporation in 1993, it contends the Commission should look at those total savings and the benefit conferred on ratepayers as a result of the consolidation of services to conclude that the costs are reasonable, necessary, and no higher than charges to other affiliates. *See* EGS Response at 20.

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[28] 17 P.U.C. BULL. at 3185.

[29] *Id.* at 3398.

[30] *Cities of Abilene v. Public Utility Comm'n of Texas,* 854 S.W.2d 932, 946 (Tex.App.--Austin 1993), *rev'd on other grounds,* 909 S.W.2d 493 (Tex. 1995). Here the Commission also found that the allocation methods produced "a reasonable result based on cost causation and benefit received" and that the services were charged to SBC's subsidiaries at cost. The court held that the following findings proved that the affiliate costs were reasonable and necessary: SBC removed legislative advocacy, advertising and membership expenses; the majority of services were non-discretionary; and economies of scale produced benefits by grouping these activities into a central entity. *See* Docket Nos. 8585 & 8218, Findings of Fact Nos. 175, 184, 185, 17 P.U.C. BULL. at 1783-1787.

In the last TU Electric rate case,[31] the ALJ explained that the statute imposes no obligation that the company's costs be the lowest possible. Rather, those costs must be reasonable. It was sufficient that TU Electric showed:

1. the services provided by TU Services were at cost;[32]
2. the charges included no equity return or profit;[33]
3. prices paid by TU Electric were no higher than the prices charged to other affiliates.[34]

In contrast, the examiner in Docket No. 5610, while discussing GTE's procurement procedures, which did not include competitive bidding, stated, "Section 41(c)(1) [§36.058] requires that the Commission maintain [a] skeptical attitude towards transactions with affiliates, and the testimony of a utility's witnesses is not sufficient grounds to lay the matter to rest."[35]

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[31]*Application of Texas Utilities Electric Company for Authority to Change Rates*, Docket No. 11735, Examiner's Report at 1207-1208 and Finding of Fact No. 121, 20 P.U.C. BULL 1029 (Jan. 28, 1994).

[32]*Id.* Finding of Fact No. 121B, 20 P.U.C. BULL. at 1543.

[33]*Id.* Finding of Fact No. 121A, 20 P.U.C. BULL. at 1543.

[34]*Id.*, Finding of Fact No. 121E, 20 P.U.C. BULL. at 1544.

[35]Docket No. 5610, Examiner's Report, 15 P.U.C. BULL. at 76.

See also Public Utility Commission v. GTE-Southwest, Inc., 901 S.W.2d 401, 416 (Tex. 1995), where the Texas Supreme Court held that the Commission's findings on affiliate costs related to one GTE affiliate lacked "at least one essential finding required by section 41(c)(1)--that each item or class of items allowed is reasonable and necessary." The Court concluded that the Commission's findings were not sufficient to support its determination that payments by GTE to GTE Directories were reasonable and necessary operating expenses.

With regard to GTE Service Corp., the Court held: "Although the finding of fact as supplemented by the Examiner's Report is not in the exact form stated in section 41(c)(1), it constitutes sufficient findings (1) that each item or class of items allowed is reasonable and necessary and (2) that the price paid by GTE 'is no higher than prices charged by the supplying affiliate to its other affiliates . . . for the same items or class of items . . ..'"

At 901 S.W.2d 415, the Court discussed those findings that met the statutory

In another case cited by EGS, involving Southwestern Bell Telephone Company (SWBT), Docket No. 8585, the Commission made specific findings regarding the affiliate services. Examples follow:

1. Based on a study performed by Theodore Barry and Associates, the activities provided by SBC were necessary to conducting SWBT's business, were appropriately provided by SBC, not duplicated within SWBT, and the costs direct charged or allocated to SWBT were reasonable when compared to alternative service providers;
2. The expenses to SWBT were less than what it would incur if it were to publish the white pages directories on its own; and
3. The reasonableness of Mobile's prices was supported by the fact that it operates in a highly competitive environment, and its charges to SWBT were less than or equal to corporate rates offered to non-affiliates in a market.[36]

As discussed below, EGS' direct case in this docket includes no studies, no supporting evidence of non-duplication, no comparison to alternative providers, no evidence of costs to EGS on a stand-alone basis.

What then is the kind of evidence the Commission must consider? The *Rio Grande* case is

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requirements:

(1) the prices charged for each class of service are reasonable relative to the cost of obtaining them from alternative sources;
(2) the services are reasonable and necessary for the provision of utility service;
(3) the prices charged to GTE Southwest were no higher than prices charged to other subsidiaries;
(4) the services obtained were necessary; and
(6) the allocated amounts reasonably approximate the actual costs of the services received.

[36]Docket No. 8585, Findings of Fact Nos. 194, 205, 216, 17 P.U.C. BULL. at 1787, 1789, & 1791. *See also Application of Southwestern Texas Telephone Company for Authority to Change Rates*, Docket No. 6740, Examiner's Report, 12 P.U.C. BULL. 1447, 1498 (Sept. 25, 1986). While the examiner admitted that because there was no probative evidence of a reasonable rent the entire amount should be disallowed, he refused to take such a "fundamentalist" approach and searched for a way to establish a reasonable rent expense. He adopted the Staff's proposed amount.

clear: there is, the court said, a taint of self-dealing associated with affiliate expenses because they are not achieved through arm's length transactions. The ALJ interprets this to mean, if affiliate expenses represent self-dealing, which they do, then testimony of employees of the company or hired consultants alone about the reasonableness of those expenses, is by its very nature self-serving. Consequently, the Commission's responsibility to protect public interests can not be achieved without inspecting underlying evidence and performing some independent analysis. The Company's direct evidence should include sufficient information to accomplish this review.

C. Price

The second part of the statutory requirement is that the Commission find the prices charged by the affiliate to EGS are no higher than those charged to other affiliates for each item or class of items. In the Order on Rehearing in Docket No. 14965, the Commission reviewed allocation methods to determine whether they resulted in charges for services to CPL that were no higher than the price the supplying affiliate charged to other affiliates (Finding of Fact No. 62G, 62H, 62I, 62J).

IV. The Evidence

A. General Counsel and Cities' Claims

EGS prefiled direct testimony that addressed the ESI and EOI billings and attached a listing of all service requests (SRs) from ESI[37] and work orders from EOI.[38] It also gave a description of all SRs over $25,000.00[39] and selected samples describing EOI work orders.[40] Cities break down the

[37]EGS Ex. 91, Buck Direct, at Ex. LEB 4-a and 4-b.

[38]EGS Ex. 95, Kenney Direct, at Ex. CCS 4-a and 4-b.

[39]EGS Ex. 91 at Ex. 4-c.

[40]EGS Ex. 95 at Ex. 4-c.

evidence between ESI and EOI.

1. ESI[41]

RFP Schedule G-6.1 groups these items by FERC account, but that is not the basis on which EGS asks the Commission to make its findings of reasonableness and necessity. Tr. at 5758-5759. Instead, EGS witnesses ask the Commission to review all SRs to determine the necessity of each service. Tr. at 5750-5752. Based on an attempt at hearing to match dollar amounts with particular service requests, which requires moving among several schedules in the RFP and attachments to testimony, Cities conclude that such a review is impossible.[42] EGS witness Dr. Buck admitted that he did not discuss those by item or class. Tr. at 5757. Instead, EGS asks the Commission to find the *total* ESI-billed expenses reasonable. Tr. at 5749. Schedule G-6.1, page 2, line 46 shows that amount to be $92.7 million. Cities identify the evidence that supports their position:

- EGS presented no benefit study to show the necessity of any service or product or grouping thereof. Cities Ex. 62; Tr. 5826-5827.

- EGS presented no study or evidence to quantify economies of scale or other cost savings from using a centralized service company. Cities Ex. 63.

- EGS presented no cost studies, cost comparisons or market price analyses on any service or group of services. Cities Ex. 65; Tr. 5719-5720.

- EGS presented no cost comparison of the cost to have ESI perform the

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[41]*See* Service agreement at EGS Ex. 91, Ex. LEB-3, which lists the kinds of work ESI does for EGS.

[42]In fact, in its Response, EGS claims that it never intended that the Commission should have to make its analysis on an item by item basis. *See* EGS Response at 49.

service versus the cost for EGS to perform the service. Tr. 5729-5732.

- EGS presented no bids to demonstrate that the price charged is lower than out sourcing the service. When a witness referred to out sourcing on the stand, he had to admit that no evidence was presented on cost comparisons to out source, and when asked to show all bids in discovery, EGS showed one bid for one service. Tr. 5878-5879; Cities Ex. 78.

- EGS did not present any comparison of the cost for individual services or groups of services charged by ESI to EGS to the corresponding costs for such items or groups at similar corporations. Tr. 5839.

- EGS presented no objective check on the reasonableness of the cost of a service or group of services by *any* of the cost standards its outside expert witness advocated in his speech on how a utility could meet its burden of proof on affiliate payments and services. Tr. 5840; Cities Ex. 61.

- EGS did not present an evaluation of whether the expense requested for each service item or class of items approximates the actual cost of the service to the utility. Tr. 5854.

- EGS did not present an evaluation showing that the price charged to EGS for each service or class of services is no higher than that charged to other affiliates. Tr. 5850-5854.

- EGS did not present evidence on the necessity of each service or group of services. Tr. 5872-5853. Now EGS suggests the Judge/Commission should perform such evaluation for it by reviewing each SR. Tr. 5871.

Cities Response at 4-5.

2. EOI

EOI is responsible for the management, operation and support of the five nuclear generating units owned by the Entergy operating companies. EGS Ex. 110, p. 1; Tr. at 6506. Assuming the Commission required a review by item or class of items, Cities suggest this would be impossible to perform because the Company did not provide all the work orders in its evidence; it supplied only examples. Tr. at 5917; EGS Ex. 95, Ex. CCS-4(c). The listing provided consists of two or three-word descriptions, not meaningful to those outside the Company. Ms. Jeanne Kenney, EGS witness on EOI indirect affiliate charges, said the Commission should evaluate reasonableness of EOI items by FERC account. Tr. at 5917. However, the Company did not provide any evidence to support the reasonableness of expenses by this grouping. Then Ms. Kenney suggested the Commission could evaluate the reasonableness of EOI expenses by class of items supported by EGS' bench marking. Tr. at 5955. Again, Ms. Kenney could not name the classes of items. Tr. at 5956-5957. Cities Exhibit 7, admitted in the Fuel Phase of this case, is the bench marking study and does not demonstrate the reasonableness and necessity of each item or class of items.

Mr. John R. McGaha testified for EGS regarding the direct charges from EOI for nuclear non-fuel O&M expenses. He indicated there are over 1,000 operation and maintenance projects to which EOI made charges, Tr. at 6502-6503, but he addressed only 10 in his testimony. EGS Ex. 110 at 7-22; Tr. at 6503. Also, Mr. McGaha did not evaluate whether the price which EOI charges EGS was higher than the price EOI charged the other operating companies for the same services. Tr. at 6512-6513. Cities conclude that there is nothing in EGS' direct case regarding these FERC 500 accounts on which the Commission can make the findings statutorily required under PURA §36.058.

Finally, Cities discuss the testimony of Mr. Bernard Uffelman, the Deloite and Touche

accountant EGS hired to review its affiliate transactions. Mr. Uffelman looked at all the SRs and work codes and reviewed in detail 52 ESI transactions and 25 EOI transactions out of the hundreds that exist. Tr. at 5821; EGS Ex. 93, BLU-2, p. 17. Mr. Uffelman agreed at hearing that no inference can be drawn from his review for the remaining SRs and work orders or the validity of the total group of services. Tr. at 5822-5824; EGS Ex. 93 p. 62, lines 14-16. He also acknowledged at hearing that he was hired by Entergy as a consultant and has not presented an independent audit of these expenses. Tr. at 5963-5964.

B. EGS' Explanation

As discussed above, EGS takes the position that it need not provide anything but proof as to the reasonableness and necessity of *all* the affiliate expenses.

1. ESI

If the Commission concludes that an evaluation of total costs satisfies the statutory mandate, then EGS says it should consider the following evidence regarding ESI's charges to EGS listed by EGS in its Response. The testimony of Dr. Buck, EGS Ex. 91:

- background information on the Entergy system and all of its companies EGS Ex. 91 at 6-9; LEB-1;
- data demonstrating the cost savings achieved through the centralization of services and the resulting reasonableness of the affiliate charges, *Id.* at 9-11; LEB-2 & -13;
- the application of the affiliate standard to a highly functionalized, multi-state organization, *Id.* at 11-16;
- an overview of the services provided by ESI and the service agreement governing them, *Id.* at 16-21; LEB-3;
- a description of the budget process and how it assures that costs are reasonable and

necessary, *Id.* at 21-23;

- a description of the bill process and controls that assure that ESI bills at actual cost and that EGS pays no higher price than that paid by any other company charged by ESI, *Id.* at 24-38; LEB-5 & 6;
- a summary of charges by ESI to EGS and all other companies, *Id.* at 38-46; LEB-4 & 7;
- a discussion of the types of costs charged to EGS, *Id.* at 7-52; LEB-9;
- a detailed discussion of all of the billing methods used to allocate common costs to EGS, including the methodology used and the percentages to each company, *Id.* at 52-70; LEB-8, 10 & 11;
- a discussion of post-merger EGS and the tangible benefits resulting from centralization of services, EGS Ex. 92, Buck Supp. Direct, at 3-11;
- a discussion of controls to insure that Entergy's non-regulated affiliates are not subsidized by EGS, *Id.* at 11-17;
- a review of services provided by EGS to affiliates during the test year, *Id.* at 23-28; and
- testimony expressly addressing the affiliate standard articulated in PURA, and why the charges from ESI meet the standard, EGS Ex. 91 at 71-75.

EGS claims that the General Counsel did not address the "necessary" prong in his motion for partial summary decision and therefore EGS need not address it. The ALJ finds, to the contrary, that the General Counsel cited the reasonable and "necessary" standard in every relevant part of his pleading, and the ALJ concludes that is indeed a part of this review.

2. EOI

In its Response at 32-42, EGS first references Ms. Kenney's testimony describing the process in place to prepare budgets, to ensure that charges to River Bend are appropriate and charged to the correct work codes, and that the charges are reasonable and necessary. EGS Ex. 95, Kenney Direct, at 10 ff. Mr. McGaha also testified to the reasonableness and necessity of the direct charges incurred

by EOI at River Bend. EGS Ex. 110; Tr. at 6541-6546. In summary, EGS argues that it showed the process in place at EOI to ensure compliance with the PURA standards, and substantiated that showing with specific examples in various categories of costs, citing EGS Ex. 110 at 17-22 and 32-33; EGS Ex. 95 at 16 -18ff. These categories, however, were not used by EGS to evidence classes of items.

C. Additional Evidence

Ms. Kenney listed all charges to EGS at Ex. 4a to her testimony, approximately 760 separate charges totaling $156.4 million. She provided a one paragraph description of 10 of those work orders and then a list of the SRs billed to EOI from ESI with no description, saying only that the Commission could find them in the over 840 pages of descriptions provided in Dr. Buck's Ex. LEB-4c.

Ms. Kenney described the process for selecting the allocation method used to allocate work-code bills. Of the $156 million charges, $134.6 million are direct charges for River Bend. Of that amount, $7,008,707 were the costs allocated from ESI.

Ms. Kenney testified that all affiliates pay the same for services rendered by EOI--EOI's actual cost for the respective services. *Id.* at 3. Referring to the operating agreement, she explained that it is similar to the one all Entergy nuclear affiliates agreed to, and charges from EOI are commensurate with charges to other affiliates. She testified that

> . . . use of a single billing method for each work code assures that costs are allocated to all benefiting sites based on the same criteria. This consistency ensures that all sites receiving benefits pay an appropriate portion of the costs, as well as the same price as other affiliates. Therefore, costs allocated to EGSI by Entergy Operations are no higher than costs allocated to the owners of Entergy's other nuclear units for the same services provided.

EGS Ex. 95 at 27.

She also stated that the Commission could make its findings as to necessity of the costs and services by reviewing the work orders, Tr. at 5917, as well as the processes and controls in place to initiate a work order. Tr. at 5922.

Basically, Mr. Uffelman reviewed the *process* by which Entergy's service companies capture costs and the billing methods they use in allocating or direct billing those costs to determine whether they are being appropriately applied. Tr. at 5771, 5854-5855.

In cross-examination regarding his early 1990's speech (Cities Ex. 61), Mr. Uffelman testified that the company has a higher burden of proof with these type of costs than any other costs considered for cost of service, Tr. at 5691; that the Texas statute reverses a presumption that historical test year expense is prudent and reasonable and, referencing Docket No. 8585, the utility must meet prudent and reasonable standards for affiliates before those costs are allowed in cost of service, Tr. at 5692; there must be a demonstration that a benefit is derived from the cost causal relationship of allocating costs for services, Tr. at 5715; there should be a bench marking of costs, which could be done through a survey of what other companies in the industry pay for similar services, Tr. at 5720; to show that each service or class of service is reasonable, the utility could look at the way it reduced costs from the past--it does not necessarily have to go out and do a cost study, look at out-sourcing studies, or do bench marking, Tr. at 5721. Mr. Uffelman agreed that he did not perform a check on price that he had advocated in that speech. Tr. at 5841-5842. That was not his charge from Entergy Corporation.

Mr. Uffelman testified that service companies such as ESI can achieve significant economies of scale that ordinarily cannot be achieved on a stand-alone basis. Even he could not say, however, that ESI performs the work more cheaply than EGS would by itself, but only that the total dollars allocated or billed to EGS as part of the Entergy System are *probably* much less than what it would

have cost EGS to perform the services itself. *Id.* at 44, emphasis added.

EGS did not perform studies to demonstrate cost savings from economies of scale. Tr. at 5832. Dr. Buck testified that he looked at total costs of providing services from ESI and found they were lower than the total costs EGS experienced in the past. He did not provide this information on a class of services basis, so that the Commission could compare current costs with costs to EGS in the past. *See, e.g.* Tr. at 5740-5741 regarding accounting services. Dr. Buck testified that he conducted bench-marking and out-sourcing studies but did not put them in his testimony. Tr. at 5748. In sum, Dr. Buck's position is reflected in this statement:

> Again, I think if you go back and you look at the record of the cost reductions that have taken place, the efficiencies that have been gained, the reductions [in] manpower, collectively that demonstrates the reasonableness of the costs and looking at each of the SRs determines whether, in fact, those individual services are necessary.

Tr. at 5750-5751.

V. Ruling

A. ALJ's Conclusions

This decision is governed by the statutory requirement to make findings of fact based on each item or class of items of EGS' affiliate expenses and on the Commission's policy which requires strict scrutiny of affiliate costs. The ALJ is not at liberty to change that policy or accept as appropriate findings that do not comply with the statute's explicit mandate. Moreover, Commission precedent is varied and only moderately relevant to this decision. For example, Docket No. 9850 on which EGS relies was decided in 1991 at a time when HL&P was not preparing to enter competition, and scrutiny of affiliate expenses was not heightened as it has been in the last few years. Also, HL&P was not emerging from a business combination whose affiliate service companies were being evaluated for the first time by the Commission, as is EGS.

The ALJ finds the evidence does not provide a means for the Commission to determine the necessity of affiliate charges. There are a total of approximately 1,260 SRs from ESI to EGS listed in Ex. 91, Ex. LEB-4a, and in evidence are 843 pages of mostly one paragraph descriptions of services charged to EGS. None of the SRs are arranged in categories. In order for the Commission to make a finding as to the necessity of these, it would have to go through each one of the 843 items, as Dr. Buck suggests, and make a determination based on the abbreviated description provided on each page.[43] It would then need to find out what the charge was for that SR, because no dollar amount is included on the page. To do that, the Commission would have to look at two more exhibits to get the FERC account number and the dollar amount for that account, then to Schedule G-6.2 to see if there has been an adjustment to the item, look through perhaps two or three pages to find the SR number and confirm whether an adjustment had been made; if there is an adjustment, the Commission would have to subtract the amount from the FERC account listed on Schedule G-6.1; and then it still would not know the dollar amount of the disallowance, because the items are presented on a total company basis; therefore, the Texas jurisdictional amount would have to be calculated. *See* Tr. at 6025-6033 for discussion of this process.

With regard to the reasonableness of the expenses, Dr. Buck directed the fact finder to the scope statements contained in LEB-4c saying they describe in detail the benefits that EGS derives from those services.[44] Tr. at 5987. Because those items are not arranged by class and no underlying evidence is included to support the reasonableness or necessity of the items by class, the only way for the Commission to make an independent evaluation of these costs is by looking at each item. Such task would be daunting.[45] No other evidence exists in the record to support findings for each item,

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[43]At Attachment E to its Response, EGS provided a flow chart to show how to traverse the evidence.

[44]A sample of those scope statements is attached hereto at Attachment 2.

[45]Even Mr. Uffelman, who spent many hours and charged EGS thousands of dollars, said in his report, "Due to the large number of SRs and Work Codes . . . there was no practical way in which to examine all of the transactions." EGS Ex. 93, Ex. BLU-3 at 9.

and EGS witnesses testify only as to *total* costs.

ESI has 18 allocation formulas and 65 different billing methods to allocate its costs to the System companies. Of the 65 billing methods, 10 direct-bill the various companies and 55 represent the 18 allocation formulas or their derivations. Forty-five billing methods apply to EGS. EGS Ex. 91 at 53-54; Exs. LEB-10 and LEB-11. In the CPL case, the Commission reviewed the allocation process to determine whether there were benefits to CPL from the particular allocations. In order to make a similar diagnosis based on EGS' direct evidence, the Commission would look at each SR in Ex. 91, LEB-4c, because that is one place to get the billing method. After getting the SR number from LEB-4c, then one could look, for example, at EGS Ex. 93 (Uffelman Direct) at BLU-3 Att. 1 to get the dollar amount. The ALJ did just that with SR No. S000005600 found at Page 13 of LEB-4c. There the billing method is 12; on BLU-3, Att. 1, the billing method is 93. This is not necessarily a discrepancy, because billing method 93 is based on billing method 12. One learns this from looking at EGS Ex. 91 at Ex. LEB-10, which describes the billing methods. Billing method 93 excludes Entergy Enterprises, Inc. (EEI) and Entergy Power, Inc. (EPI),[46] but method 12 includes them. Dr. Buck explains the billing methods in his direct testimony beginning at page 52. He describes them generally without relating them to particular costs or categories of costs.

ESI bills for services to EOI, who allocates those charges to each nuclear utility. ESI also bills for services to EEI, who then passes those costs along to unregulated affiliates, a process that is not described in any detail in the evidence and which cannot be verified by the Commission based on the Company's direct case. It is not possible to determine whether there are costs that should have been charged but were not charged to EEI, for example.[47]

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[46]These are described by Dr. Buck at EGS Ex. 91 at 8.

[47]Dr. Buck mentioned a Vantage audit conducted from 1994 through 1996 for various state commissions including the PUC. He testified that the audit found very little problem from cross-subsidization between the regulated and non-regulated companies. EGS Ex. 91 at 37. EGS did not put the audit report in its direct case.

The only way the Commission could make findings as to the reasonableness and necessity of the affiliate charges is to accept EGS' theory that the statute permits findings based on total costs and rely on testimony of EGS witnesses, without underlying studies or reports, to rebut the disallowance presumption contained in PURA §36.058. Such would not seem to comport with the *Rio* court's conclusion that regulators should maintain a healthy suspicion about affiliate transactions.

EGS submits that granting the General Counsel's motion requires reliance on a two-fold premise:

> first, the "class" of total non-fuel O&M, total nuclear non-fuel O&M, total ESI expenses or total EOI expenses is impermissible as a matter of law; and
>
> second, evidence of the operation of allocation factors and internal company processes is no evidence as a matter of law that the price charged to EGS by EOI and ESI is no higher than prices charged to other companies.

EGS Response at 53.

First, the ALJ concludes that PURA §36.058 findings based on a class of total costs is impermissible as a matter of law in this docket. Even though the evidence EGS presented does show that ESI and EOI were established to and likely do provide essential functions for operating a utility (*See* EGS Ex. 91 at 17-20; Ex. LEB-3), EGS failed to meet its burden of proof as to the reasonableness and necessity of each item or class of items of affiliate expense. Second, ESI and EOI bill their expenses at their costs and use only one billing method for each charge. Based on Commission precedent, the operation of allocation factors and internal company processes may be sufficient to evidence that the prices charged to EGS by ESI and EOI are no higher than prices charged to other affiliates. Still, the evidence permits findings based only on total costs.

Accordingly, the motion for partial summary decision is granted, and all affiliate expenses are disallowed. Unless the Commission permits some other approach, this decision will be carried with the docket and findings of fact will be included in the PFD.

B. Certification to Commission

This order is herewith certified to the Commission for review. The Commission could decide not to disallow all costs but to permit another approach. The ALJ offers the following possible alternatives:

1. The Commission could return the case to hearing on the intervenor, staff, and rebuttal evidence and, in its final order or separate rulemaking, establish for future proceedings where affiliate cost recovery is an issue the kind of information the Commission needs from a utility.

2. The Commission could require EGS to refile its direct affiliate case on a class of items basis, although this approach would likely be very involved, costly, and require more time.

3. The manner in which EGS presented its direct case could be reviewed to determine whether its filing is a sanctionable offense under P.U.C. PROC. R. 22.161(b)(1). In order to address this matter, the case could go back to hearing to allow the intervenors and General Counsel to offer evidence as to an offense and the kind of sanction that should be imposed--i.e., (a) a dollar amount of disallowance that reflects the kind of effort parties had to mount in order to get necessary affiliate information; or (b) a dollar amount which reflects the value of costs about which information was received very late in the process; or (c) striking rebuttal testimony related to affiliate transactions. This could occur during or preceding the continued hearing on intervenor and staff evidence regarding affiliate expenses.

SIGNED AT AUSTIN, TEXAS the 13th day of October 1997.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kathleen Sanford

KATHLEEN SANFORD
ADMINISTRATIVE LAW JUDGE

Description	FERC Account	Amount Excluded
Legislative Advocacy Expense: (List each individual or organization separately)		$
Penalties & Fines: (List payee, date, and nature of penalty)		
Other: (List each item separately and describe)		

Schedule G-5.5: Comparison of Prior Rate Case Exclusions to Current

For each individual, company, or organization listed on Schedule G-5.4, or other individual, company, or organization providing similar services, list any payments made during the test year and included in requested cost of service for activities or services similar to those excluded from either of the two most recent rate cases not resolved by settlement. Use the following format:

Name of Payee	Description	FERC Acct.	Test Year Amount	Requested Amount
			$	$

Schedule G-6: Summary of Test Year Affiliate Transactions

This schedule shall present a summary of affiliate transactions with the utility in the following format:

Description	Schedule No.	Amount
Test Year Expense by Affiliate	G-6.1	$
Adjustments to Test Year Expense by Affiliate	G-6.2	
Total Requested Expense from Affiliates		$

Schedule G-6.1: Summary of Test Year Expense by Affiliate

This schedule shall present a summary of test year expense transactions between the utility and individual affiliates in the following format:

FERC ACCT	Affiliate	Service	Amount
	Affiliate 1		$
	Affiliate 2		
	.		
	.		
	Total Test Year Expense by Affiliates		$
			G-6

Schedule G-6.2: Summary of Adjustments to Test Year Expense by Affiliate

This schedule shall present a summary of adjustments to test year expense transactions between the utility and individual affiliates in the following format:

FERC ACCT	Affiliate	Reason for Adjustment	Amount
	Affiliate 1		$
	Affiliate 2		
	.		
	.		
	.		
	Total Adjustments		$
			G-6

Schedule G-7: Federal Income Taxes

Schedule G-7.1: Reconciliation of Test Year Book Net Income to Taxable Net Income

This schedule shall include a complete reconciliation of book net income and taxable net income for the test period and for the most recent year for which a tax return was filed in the same format as required by the Federal Internal Revenue Service. A complete explanation of all items in the reconciliation shall be included. A copy of the workpapers containing supporting calculations for each item in the reconciliation shall be filed in the voluminous room concurrent with the filing of the rate filing package (RFP) and shall be referenced to this schedule. If the claimed tax allowances do not take into consideration all items appearing in the reconciliation for the most recent tax return, the reasons therefore shall be submitted.

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ENTERGY SERVICES, INC.
SCOPE OF WORK

SR	Status	Billing Method
S000011139 SOUTHWEST POWER POOL -EGSI	Open	EGSI

SCOPE

The services to be provided under the Southwest Power Pool -EGSI SR are related to energy Dispatch to the System. This SR represents EGSI's portion of the annual membership dues, and has annual charges of $25,000 or more. Major activities to be charged to this SR include those associated with predicting the daily load requirements of the Entergy System, selecting potential sources to meet that demand including prudent reserve requirements, adjusting the load carried by the various sources to match system demand, and coordinating the control of the Entergy System with neighboring control areas to avoid inadvertent interchanges. The primary types of costs to be charged to this SR are payroll, misc. supplies, and employee expenses. Billing Method EGSI was selected because the charges to this SR are driven exclusively by and should be charged 100% to EGSI.

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ENTERGY SERVICES, INC.
SCOPE OF WORK

SR	Status	Billing Method
S000012500 OPNS- EX VP EXTERNAL AFFAIRS	Open	93

SCOPE

The services rendered under this SR are necessary to perform the External Affairs function for Entergy Corporation and its regulated subsidiaries. The costs included in this SR include labor and the related employee expenses for performing all of the general and administrative duties for the Executive VP, External Affairs that are not specifically related to any specific legal entity or project.

Key activities include:
- human resource issues
- goals
- strategic planning
- budgeting
- regulatory and industry issues
- participation on various internal boards and committees
- the necessary clerical and technical support needed to administer the External Affairs department.

The charges are reasonable as the include only charges that are non-entity or non-project specific that are incurred in the daily operations of administering the External Affairs department. Further, the charges are necessary and beneficial since they are related to the strategic direction and oversight of the External Affairs functions.

Billing method 93 is a composite method based on four components with equal weighting to each: kilowatt-hour energy sales; average customers; number of employees; and capability responsibility ratio. The billing method is the same for all companies as it is a composite method that bills to all regulated companies in the Energy System based on these ratios, and thus no company receives a disproportionate share of the costs. The billing method is appropriate because the composite method results in a ratio that reflects the relative size and complexity of each entity. Thus, the allocated costs approximate the actual costs of these services. The portion charged to EOI is allocated back to the sites under EOI allocation method E006, equally to all sites. This method is most equitable for these types of non-specific charges.

Charges to this SR exceed $25,000 annually

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ENTERGY SERVICES, INC.
SCOPE OF WORK

SR	Status	Billing Method
S000012571 MAJOR ACCOUNTS PROGRAM ALLOCATION	Open	35

SCOPE

This SR is used to capture expenses associated with the overall management and implementation of the sales function within the Major Accounts group. The charges to this SR exceed $25,000 annually . Major activities include coordinating marketing programs, calling on our customers, providing service to our customers, and answering their questions and needs. The primary types of cost are payroll expenses, employee expenses, and marketing expenses. This function assures that costs are reasonable and as low as possible for the customers. This SR reflects costs that are incurred in supporting our customers through our customer service and marketing expertise. The billing method of 35 was selected for this SR because the services provided are driven by the number of customers. The Operating Companies benefit in proportion to the number of customers they serve. Thus, we allocated these costs to the operating companies based on each company's percentage of total Operating Company electric customers.

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ENTERGY SERVICES, INC.
SCOPE OF WORK

SR	Status	Billing Method
S000012573 NATIONAL ACCOUNTS PROGRAM ALLOCATION	Open	35

SCOPE

This SR is used to capture expenses associated with the overall management and implementation of the sales function within the National Accounts group. The charges to this SR exceed $25,000 annually . Major activities include coordinating marketing programs, calling on our customers, providing service to our customers, and answering their questions and needs. The primary types of cost are payroll expenses, employee expenses, and marketing expenses. This function assures that costs are reasonable and as low as possible for the customers. This SR reflects costs that are incurred in supporting our customers through our customer service and marketing expertise. Billing Method 35 was selected because these costs are driven by the number of electric customers being served. Each Operating Company benefits from the service performed under this SR in relation to it's customer base. Therefore, we allocated costs based on each Operating Company's customers.