



Control Number: 26195



Item Number: 650

Addendum StartPage: 0

Rebecca Klein
Chairman

Brett A. Perlman
Commissioner

W. Lane Lanford
Executive Director



Public Utility Commission of Texas

RECEIVED

02 JUL -2 PM 3:02

PUBLIC UTILITY COMMISSION
FILING CLERK

TO: All Parties of Record

FROM: Stephen Journeay, Senior Director
Policy Development Division

A handwritten signature in black ink, appearing to be "SJ", written over the name Stephen Journeay.

RE: P.U.C. Docket No.26195; SOAH Docket No. 473-02-3473 - *Application of Reliant Energy, Inc. to Reconcile Fuel Revenues and Expenses*

DATE: July 2, 2002

Enclosed herewith are the following documents related to the above referenced application:

1. Application and Commission file in the above referenced docket*
2. Request for assignment of Administrative Law Judge
3. Order of Referral

cc: without Items 1 and 2: All Parties of Record

*Referred file contains all filings through July 1, 2002, except confidential documents. The application contains six (6) binders.

/as



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**P.U.C. DOCKET NO. 26195
SOAH DOCKET NO. 473-02-3473**

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**APPLICATION OF RELIANT ENERGY, §
INC. TO RECONCILE ELIGIBLE FUEL §
REVENUES AND EXPENSES §**

**PUBLIC UTILITY COMMISSION
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FILING CLERK**

ORDER OF REFERRAL

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

In order to develop a list of the issues to be addressed in this docket, as well as any necessary statement of Commission policy, precedent, and/or position on any threshold legal or policy issue(s) relevant to this proceeding, Reliant Energy, Inc., shall, and the Commission Staff and any other interested party may, file with the Commission a list of issues to be addressed in the docket by July 12, 2002. This pleading may also (1) identify any issue(s) which should not be addressed in the docket, and (2) identify any threshold legal and/or policy issue(s) which should be briefed for purposes of a preliminary order. Specific explanations should support proposals included in the pleading pursuant to (1) and (2). Parties shall not file responses to any pleading submitted in response to this Order, unless specifically requested.

The Commission will issue and provide to SOAH a preliminary order which includes a list of issues and areas that must be addressed in this proceeding, pursuant to TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000 & Supp. 2002), and any necessary statement of Commission policy, precedent, or position on threshold issues, or combination thereof, relevant to this proceeding, pursuant to TEX. GOV'T CODE ANN. § 2001.058(c) (Vernon 2000 & Supp. 2002). The Commission will consider and possibly adopt a preliminary order in this docket in the open meeting currently scheduled to convene on July 25, 2002.



Pursuant to P.U.C. Substantive Rule §25.236(g) the Commission shall issue a final order in this proceeding within eight months; on or before March 1, 2003.

SIGNED AT AUSTIN, TEXAS the 2nd day of July, 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

A handwritten signature in black ink, appearing to read "Stephen Journey", is written over a horizontal line.

**STEPHEN JOURNEY, SENIOR DIRECTOR
POLICY DEVELOPMENT DIVISION
PUBLIC UTILITY COMMISSION OF TEXAS**



SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195

APPLICATION OF RELIANT ENERGY,
INC. TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 1
NOTICE OF PREHEARING CONFERENCE

Case Description and Jurisdiction

On July 2, 2002, Reliant Energy, Incorporated (Reliant) filed a petition for reconciliation of its eligible fuel expenses and revenues for the period from August 1, 1997, through January 30, 2002. In its application, Reliant seeks a final fuel reconciliation under the Public Utility Regulatory Act, TEX. UTIL. CODE § 39.202(c)(PURA). According to Reliant, it had an under-recovery balance including interest of \$144,339,069 for electric utility service to customers during the reconciliation period.

The Commission has jurisdiction and authority over this proceeding pursuant to PURA §§ 14.001, 36.203(e), and 39.202(c). Pursuant to P.U.C. SUBST. R. 25.236(g), the statutory deadline in this proceeding is March 1, 2003. The Commission transferred this proceeding to the State Office of Administrative Hearings (SOAH) on July 2, 2002, requesting the assignment of an Administrative Law Judge (ALJ) to conduct a hearing and issue a proposal for decision, if such is necessary. SOAH has jurisdiction over matters relating to the conduct of the hearing in this proceeding pursuant to TEX. GOV'T. CODE ANN. § 2003.049 (Vernon 1998 & Supp. 2002). The Commission ordered Reliant and the Commission Staff (and any other interested party) to file a list of issues to be addressed in this proceeding by July 12, 2002. The Commission will consider these pleadings and possibly adopt a preliminary order in this docket at the open meeting scheduled to convene July 25, 2002.

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Prehearing Conference

Pursuant to the provisions of P.U.C. PROC. R. 22.121, a prehearing conference will be conducted in this docket beginning at **9:00 a.m. Tuesday, July 23, 2002**, at a SOAH hearing room located in the William P. Clements Building 4th floor, 300 West 15th Street, Austin, Texas. The following matters will be discussed at the prehearing conference:

1. Any motion filed by 3:00 p.m. on July 19, 2002 and hand-delivered or faxed to the ALJ on that day—the FAX number is (512) 936-0770;
2. Whether the Commission Staff considers the application as materially complete;
3. Status of notice, including Staff comments on the sufficiency of the notice;
4. Protective Order;
5. A procedural schedule including a hearing on the merits that will permit this case to be returned to the Commission by the deadline established in the substantive rule. Reliant shall provide a proposed schedule and date for hearing at the prehearing conference; and
6. Any other matters as may assist in the disposition of the proceedings in a fair and efficient manner.

Motions for continuance of the prehearing conference, or any other conferences or hearings, shall be governed by the provisions of P.U.C. PROC. R. 22.79 for continuing a hearing on the merits.

Filing and Service Procedures

All pleadings shall be filed with the Commission's filing clerk, not with the SOAH filing clerk. The Commission filing clerk will forward a copy of the pleadings to SOAH. Parties wishing to hand-deliver a file-stamped copy of a pleading to the ALJ should deliver it to Room 504, 5th Floor, Clements Building, 300 W. 15th Street, Austin, Texas. Parties may also FAX copies of pleadings, especially those that are time-sensitive, to the ALJ at the above-listed FAX number. All


mail sent to the parties by the ALJ will be sent by first class mail *or* by FAX, unless the party requests express mailing and provides an express mail account number. Parties seeking to arrange express mailing should contact Ms. Lisa Serrano at (512) 937-0724.

The procedures regarding filing specified in Subchapter E of the Commission's procedural rules apply in this proceeding. Parties are expected to know those procedures and comply with them fully. Pleadings and other filings shall be deemed filed when the proper number of legible copies are presented to the Commission filing clerk for filing. P.U.C. PROC. R. 22.71(c).

Each party shall provide its current telephone and facsimile number, if available, to all other parties and the Commission by filing and serving all parties with such numbers. Each party is responsible for providing the Commission, SOAH, and all parties with current address, telephone, and facsimile information if such information changes. The telephone and facsimile numbers will be placed on the service list for the convenience of the parties. Parties are responsible for updating their own service lists to reflect changed information and the addition of other parties, if any. Only one address per party will be included on the official service list maintained by SOAH. The parties may agree to serve more than one representative per party. Corrections to the service list should be directed to Ms. Serrano.

SIGNED AT AUSTIN, TEXAS the 9th day of July 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



Rebecca Klein
Chairman

Brett A. Perlman
Commissioner

W. Lane Lanford
Executive Director



02 JUL 13 PM 3:58

Public Utility Commission of Texas

TO: Chairman Rebecca Klein
Commissioner Brett A. Perlman
All Parties of Record

FROM: Bridget Headrick, Policy Development Division

RE: Agenda Item 2, Draft Preliminary Order, Docket No. 26195 – Petition of Reliant Energy, Incorporated to Reconcile Eligible Fuel Revenues and Expenses Pursuant to Subst. R. 25.236

DATE: July 18, 2002

Please find enclosed the draft preliminary order filed by the Policy Development Division (PDD) in the above-referenced docket. The Commission will consider this draft preliminary order at the July 25, 2002 open meeting. Parties shall not file responses or comments addressing this draft preliminary order.

Any modifications to the draft preliminary order that are proposed by one or more Commissioners will be filed simultaneously prior to the consideration of the matter at the July 25, 2002 open meeting.

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SOAH DOCKET NO. 473-02-3473

PUC DOCKET NO. 26195 02 JUL 18 PM 3:58

**APPLICATION OF RELIANT ENERGY,
INC. TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES
PURSUANT TO SUBST. R. 25.236**

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**PUBLIC UTILITY COMMISSION
OF TEXAS**

DRAFT PRELIMINARY ORDER

On July 1, 2002, Reliant Energy, Incorporated (Reliant) filed with the Public Utility Commission of Texas (Commission) a petition requesting reconciliation of its eligible fuel expenses and revenues for the period from August 1, 1997 through the last day that the integrated electric utility provided retail service under its transition obligation on January 30, 2002 (reconciliation period). Reliant stated that it had an under-recovery balance of \$144,339,069, including interest,¹ which it seeks to include in the utility's true-up proceeding pursuant to PURA § 39.262.²

On July 2, 2002, the Commission referred this case to the State Office of Administrative Hearings (SOAH) to conduct a hearing and to issue a proposal for decision. In addition, the Commission directed Reliant and invited other parties to file lists of issues to be addressed in this docket. Reliant, Commission Staff, the Office of Public Utility Counsel, and Alliance for Retail Markets filed lists of issues on July 12, 2002.

I. ISSUES TO BE ADDRESSED

Pursuant to TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000 & Supp. 2002), the Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be

¹ Reliant's Petition at 2.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.262(d) (Vernon 1998 & Supp. 2002) (PURA).

addressed in any proceeding referred to the SOAH. After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is it appropriate to include the revenue collected in 2002 for electric service provided in 2001 and revenues and expenses incurred to serve retail electric customers during January 2002 as part of the reconciliation period in this proceeding?
2. Were Reliant's eligible fuel expenses reasonable and necessary expenses incurred to provide reliable electric service to retail customers pursuant to P.U.C. SUBST. R. 25.236(d)(1)?
3. Has Reliant properly accounted for the fuel-related revenues collected pursuant to the fuel factors and surcharges in effect during the reconciliation period?
4. During the reconciliation period, did Reliant prudently manage its fuel, fuel-related and purchased-power contracts, generation of electricity, generating facilities maintenance, and generating unit dispatch?
5. During the reconciliation period, did Reliant take appropriate action in the fuel and purchased-power markets to reduce costs and to mitigate price volatility?
6. Did Reliant make payments to affiliates for fuel and/or purchased power, and did such payments meet the statutory standards for passing such costs on to its customers?
7. Were the specific contracts and agreements for which Reliant seeks prudence findings in this docket reasonable and necessary?
8. How, if at all, should any expense or revenue impacts on Reliant resulting from ERCOT's transition to a single control area be considered in this proceeding?
9. Did Reliant record revenues and expenses from off-system sales in a manner that was consistent with the Commission's rules and prior Commission orders?
10. Should Reliant be permitted to retain 10% of the margins for off-system sales made during the reconciliation period pursuant to the criteria in P.U.C. SUBST. R. 25.236(a)(8)?
11. Has Reliant properly classified as eligible fuel expenses the fuel costs associated with the fuel sales agreement renegotiated with Kerr McGee Corporation, which were reclassified as a capital asset in HL&P's last fuel reconciliation?
12. What is Reliant's over/under recovery balance by rate class, inclusive of interest, that is to be carried forward for inclusion in the true-up proceeding pursuant to PURA §§ 39.202(c) and 39.262?

This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

Finally, the Commission reiterates the standard of review for fuel reconciliation set forth in the preliminary order in Docket No. 17460.³ Testimony should describe the utility's overall system and operation during the reconciliation period by reviewing Reliant's purchased-power arrangements, its generation fleet's fuel sources, capacities, efficiencies, and operational constraints, and any extraordinary occurrences during the reconciliation period.

II. EFFECT OF PRELIMINARY ORDER

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

³ *Application of Southwestern Electric Power Company for Reconciliation of Fuel Costs, Surcharge of Fuel Cost Under-Recoveries, and Related Relief*, Docket No. 17460, Preliminary Order (Aug. 22, 1997).

SIGNED AT AUSTIN, TEXAS the ____ day of July, 2002.

PUBLIC UTILITY COMMISSION OF TEXAS

REBECCA KLEIN, CHAIRMAN

BRETT A. PERLMAN, COMMISSIONER

**SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195**

**APPLICATION OF RELIANT ENERGY,
INC. TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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**ORDER NO. 2
PREHEARING SCHEDULE AND NOTICE OF HEARING**

The undersigned Administrative Law Judge (ALJ) convened the first prehearing conference in this matter on July 23, 2002, in Austin, Texas. At the prehearing conference, the ALJ granted intervention as parties in this proceeding to the City of Houston, Texas Industrial Energy Consumers, Office of Public Utility Counsel, Cities of Lake Jackson and Friendswood, and The Alliance for Retail Markets. No other party objected to the intervention by these entities. The parties also indicated at the prehearing conference that all notice issues have been resolved, and no party objected to Reliant Energy, Inc.'s (Reliant's) notice in this proceeding. The parties also agreed that Reliant's application was materially complete. Based on the parties' agreement, the ALJ approved of the protective order in Reliant's application (Attachment C) for use in this proceeding.

All parties participated and, upon their agreement, the following procedural schedule was adopted.

I. Prehearing Schedule

- * August 15, 2002: Intervention deadline.
- * August 20: Technical Conference
- * September 19: Technical Conference w/Staff.
- * September 27: Deadline for objections to Reliant's direct testimony.
- * October 4: Deadline for responses to objections to Reliant's direct testimony.
- * October 18: Discovery on Reliant direct ends.
- * October 29: Deadline for Intervenor testimony.
- * November 5: Deadline for objections to Intervenor testimony.

- * November 5: Deadline for Staff testimony.
- * November 12: Deadline for responses to objections to Intervenor testimony.
- * November 12: Deadline for objections to Staff testimony.
- * November 14: Deadline for rebuttal testimony.
- * November 15: Deadline for responses to objections to Staff testimony.
- * November 19: Objections to rebuttal testimony; responses to objections (at hearing).

In order to participate at the hearing, parties who choose not to file direct testimony in this matter must file a Statement of Position at the time Intervenor testimony is due. The Statement of Position should reflect with specificity the issues the party intends to contest and the party's position on those issues. Reliant shall file a status report on October 25, 2002, and November 12, 2002, updating the ALJ on settlement of this case.

II. Hearing on the Merits

All parties are hereby notified that a hearing on the merits of the application will begin at 9:00 a.m., November 19, 2002, in a SOAH hearing room on the 4th floor of the William P. Clements State Office Building, 300 W. 15th St., Austin, Texas, and will continue from day to day until concluded. The hearing is tentatively scheduled to last through November 26, 2002. In order to comply with the hearing requirements listed in Section IV., below, the parties should arrive at the hearing well before the 9:00 a.m. commencement.

III. Discovery

Subchapter H of the Commission procedural rules regarding discovery shall govern in this case. Any affidavits supporting an objection, motion to compel, or response shall be attached to the relevant pleading. When filing a motion to compel, the movant shall include a copy of every Request for Information (RFI) to which the motion applies. Discovery disputes will be resolved based on the written pleadings, any sworn affidavits attached thereto, and materials, if any, provided for in camera inspection, unless a prehearing conference is deemed to be necessary. Parties shall not

provide copies of RFIs or responses to RFIs to the ALJ. In the schedule adopted in this case, the parties have assumed a 20-day turnaround for responses to RFIs.

IV. Evidence and Exhibits

Evidence and exhibits are governed by Subchapter L of the Commission's procedural rules. The burden is on the proponent of the evidence to show its admissibility. At the prehearing conference, the parties agreed to provide each other copies of prefiled testimony and exhibits either electronically or by facsimile transmission.

A. Exhibits

Counsel should work with their witnesses to eliminate argumentative, cumulative, or otherwise objectionable passages in testimony they intend to file. The exhibits should not encumber the Commission records or pose difficulties in duplication. Voluminous or complicated data will not be admitted in bulk. Counsel shall be prepared to state that he or she has read the proffered exhibit in full and to show the admissibility of all portions offered. Exhibits should be summarized or excerpted when possible. The underlying data from which exhibits are taken shall be made available to the parties for inspection.

*Parties shall have exhibits they intend to offer marked in advance, **by the court reporter**, and have the correct number of copies for distribution. The pages of any multi-page exhibit shall be numbered consecutively.*

At the time a party offers **prefiled testimony and exhibits** into evidence during its direct case, it shall provide a copy to the court reporter and **two copies to the presiding judge**; with respect to **all other exhibits** proffered, the party shall provide a copy to the court reporter and **three copies to the presiding judge**. The extra copies provided to the judge will be used for purposes of

preparing the administrative record in the event the Commission's final order in this case is appealed for judicial review. Therefore, these copies must be conformed to reflect any changes or corrections which are made to the official exhibit. *A party failing to comply with this requirement may lose the opportunity to offer the particular exhibit in question.*

Demonstrative exhibits which are used at the hearing and which are otherwise admissible into evidence will not be placed in the record if their admission would unduly burden the record. Parties instead may submit photographs, which fairly and accurately represent such exhibits, for admission into evidence. Copies of such photographs shall be provided by the sponsoring party to all other parties participating in the hearing.

B. Information for Court Reporter

At the start of the hearing, each party shall provide the court reporter with the following information:

- (1) A list of the party's witnesses with the correct spelling of the witnesses names and a contact phone number for each witness.
- (2) The name and address of the representative for that party.
- (3) A glossary of technical terms and acronyms referenced in the party's testimony, if such has been prepared or is available.

C. Matters Read Into the Record

Any time that an attorney or a witness reads into the record from a document which is not offered into evidence, the party questioning the witness or eliciting the answer shall supply to the court reporter and to each party a copy of the page or pages that have been read into the record.

D. Scope of Questions

Cross examination on direct testimony is not limited; however the scope of redirect examination will be limited to the scope of cross-examination. The scope of recross-examination will be limited to the scope of redirect. After the ALJ's clarifying questions, if any, all parties will be allowed to ask additional questions limited to the scope of the clarifying questions. Also, the scope of cross-examination concerning rebuttal testimony is limited to the scope of rebuttal testimony even if the witness has previously testified at the hearing.

E. Objections

Parties wishing to object to questions or answers during live examination should state concisely the grounds of the objection and identify by number the applicable rule of evidence. Untimely objections will be overruled. Oral argument concerning discussion of an objection shall be limited to the party or parties making the objection and the party or parties against whom the objection is directed, unless the ALJ extends a broader invitation for argument.

To clarify the record or assist in understanding the evidence and issues, the ALJ may ask questions of witnesses at the hearing. On occasion, counsel might be concerned that the phrasing of such a question will cause problems (such as ambiguity or inquiry into privileged information) of which the ALJ is unaware. Counsel should voice such concerns just as they would object to questions by other counsel.

V. Other Procedural Guidelines

A. Ex Parte Communications

Ex parte communications with the ALJ are prohibited. Parties should communicate with the ALJ outside the hearing room only through written documents filed with the Commission and served

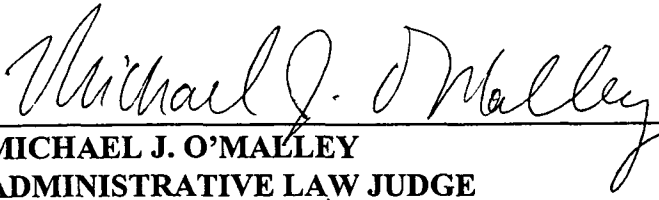
on all parties. Procedural questions may be addressed to Lisa Serrano at (512) 936-0724.

B. References to Protected Material

The attorneys are expected to make every effort to present argument, ask questions, and prepare their witnesses to answer questions in a way which will neither violate the protective order nor require closing of the hearing to the public.

SIGNED AT AUSTIN, TEXAS, the 23rd day of July, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE

**SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195**

APPLICATION OF RELIANT ENERGY, INC. TO RECONCILE ELIGIBLE FUEL REVENUES AND EXPENSES PURSUANT TO SUBST. R. 25.236	§ § § §	PUBLIC UTILITY COMMISSION OF TEXAS
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PRELIMINARY ORDER

On July 1, 2002, Reliant Energy, Incorporated (Reliant) filed with the Public Utility Commission of Texas (Commission) a petition requesting reconciliation of its eligible fuel expenses and revenues for the period from August 1, 1997 through the last day that the integrated electric utility provided retail service under its transition obligation on January 30, 2002 (reconciliation period). Reliant stated that it had an under-recovery balance of \$144,339,069, including interest,¹ which it seeks to include in the utility's true-up proceeding pursuant to PURA § 39.262.²

On July 2, 2002, the Commission referred this case to the State Office of Administrative Hearings (SOAH) to conduct a hearing and to issue a proposal for decision. In addition, the Commission directed Reliant and invited other parties to file lists of issues to be addressed in this docket. Reliant, Commission Staff, the Office of Public Utility Counsel, and Alliance for Retail Markets filed lists of issues on July 12, 2002.

I. ISSUES TO BE ADDRESSED

Pursuant to TEX. GOV'T CODE ANN. § 2003.049(e) (Vernon 2000 & Supp. 2002), the Commission must provide to the administrative law judge (ALJ) a list of issues or areas to be

¹ Reliant's Petition at 2.

² Public Utility Regulatory Act, TEX. UTIL. CODE ANN. § 39.262(d) (Vernon 1998 & Supp. 2002) (PURA).

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addressed in any proceeding referred to the SOAH. After reviewing the pleadings submitted by the parties, the Commission identifies the following issues that must be addressed in this docket:

1. Is it appropriate to include the revenue collected in 2002 for electric service provided in 2001 and revenues and expenses incurred to serve retail electric customers during January 2002 as part of the reconciliation period in this proceeding?
2. Were Reliant's eligible fuel expenses reasonable and necessary expenses incurred to provide reliable electric service to retail customers pursuant to P.U.C. SUBST. R. 25.236(d)(1)?
3. Has Reliant properly accounted for the fuel-related revenues collected pursuant to the fuel factors and surcharges in effect during the reconciliation period?
4. During the reconciliation period, did Reliant prudently manage its fuel, fuel-related and purchased-power contracts, generation of electricity, generating facilities maintenance, and generating unit dispatch?
5. During the reconciliation period, did Reliant take appropriate action in the fuel and purchased-power markets to reduce costs and to mitigate price volatility?
6. Did Reliant make payments to affiliates for fuel and/or purchased power, and did such payments meet the statutory standards for passing such costs on to its customers?
7. Were the specific contracts and agreements for which Reliant seeks prudence findings in this docket reasonable and necessary?
8. How, if at all, should any expense or revenue impacts on Reliant resulting from ERCOT's transition to a single control area be considered in this proceeding?
9. Did Reliant record revenues and expenses from off-system sales in a manner that was consistent with the Commission's rules and prior Commission orders?
10. Should Reliant be permitted to retain 10% of the margins for off-system sales made during the reconciliation period pursuant to the criteria in P.U.C. SUBST. R. 25.236(a)(8)?
11. Has Reliant properly classified as eligible fuel expenses the fuel costs associated with the fuel sales agreement renegotiated with Kerr McGee Corporation, which were reclassified as a capital asset in HL&P's last fuel reconciliation?
12. What is Reliant's over/under recovery balance by rate class, inclusive of interest, that is to be carried forward for inclusion in the true-up proceeding pursuant to PURA §§ 39.202(c) and 39.262?



This list of issues is not intended to be exhaustive. The parties and the ALJ are free to raise and address any issues relevant in this docket that they deem necessary, subject to any limitations imposed by the ALJ or by the Commission in future orders issued in this docket. The Commission reserves the right to identify and provide to the ALJ in the future any additional issues or areas that must be addressed, as permitted under TEX. GOV'T CODE ANN. § 2003.049(e).

Finally, the Commission reiterates the standard of review for fuel reconciliation set forth in the preliminary order in Docket No. 17460.³ Testimony should describe the utility's overall system and operation during the reconciliation period by reviewing Reliant's purchased-power arrangements, its generation fleet's fuel sources, capacities, efficiencies, and operational constraints, and any extraordinary occurrences during the reconciliation period.

II. EFFECT OF PRELIMINARY ORDER

This Order is preliminary in nature and is entered without prejudice to any party expressing views contrary to this Order before the SOAH ALJ at hearing. The SOAH ALJ, upon his or her own motion or upon the motion of any party, may deviate from the non-dispositive rulings of this Order when circumstances dictate that it is reasonable to do so. Any ruling by the SOAH ALJ that deviates from this Order may be appealed to the Commission. The Commission will not address whether this Order should be modified except upon its own motion or the appeal of a SOAH ALJ's order. Furthermore, this Order is not subject to motions for rehearing or reconsideration.

³ *Application of Southwestern Electric Power Company for Reconciliation of Fuel Costs, Surcharge of Fuel Cost Under-Recoveries, and Related Relief*, Docket No. 17460, Preliminary Order (Aug. 22, 1997).



SIGNED AT AUSTIN, TEXAS the 24th day of July, 2002.

PUBLIC UTILITY COMMISSION OF TEXAS



REBECCA KLEIN, CHAIRMAN



BRETT A. PERLMAN, COMMISSIONER



Page

SOAH DOCKET NO. 473-02-3473

PUC DOCKET NO. 26195

APPLICATION OF RELIANT ENERGY,
INC. TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES

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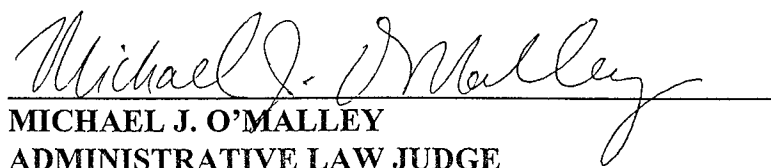
ADMINISTRATIVE HEARINGS

**ORDER NO. 3
GRANTING MOTIONS TO INTERVENE**

The following motions to intervene have been filed: City of Missouri City, City of LaMarque, City of League City, and City of Dickinson (collectively, Cities). No party has objected to the intervention of the Cities. Reliant Energy, Inc. provided electric service to the Cities and the residences and businesses located within the Cities. Having shown a justiciable interest sufficient to intervene, the Cities have standing to participate in this proceeding. Cities will be grouped with the Cities of Lake Jackson and Friendswood who have already been granted intervention in this proceeding.

SIGNED AT AUSTIN, TEXAS the 8th day of August 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE

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APPLICATION OF RELIANT ENERGY, §
INC. TO RECONCILE ELIGIBLE FUEL §
REVENUES AND EXPENSES §

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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ORDER NO. 4

**GRANTING MOTION TO INTERVENE, GRANTING REQUEST TO LIMIT
SCOPE OF PROCEEDING, AND APPROVING PROTECTIVE ORDER**

On August 7, 2002, the City of Alvin (Alvin) filed a motion to intervene. No party objected to Alvin's intervention. Because Reliant Energy, Inc. (Reliant) has provided electric service to Alvin and the residences and businesses in Alvin, Alvin has a justiciable interest sufficient to intervene in this proceeding. Accordingly, the Administrative Law Judge (ALJ) grants Alvin's motion to intervene. Alvin will be grouped with Cities of Dickinson, Friendswood, Lake Jackson, La Marque, League City, and Missouri City.

On August 14, 2002, Reliant filed a request to limit the scope of this proceeding. Reliant requests that all customer class allocation issues be deferred to Reliant's true-up proceeding. All parties agreed at the July 23, 2002, prehearing conference that these issues should be deferred. The Commission deferred the customer class allocation issues in the WTU fuel reconciliation proceeding (PUC Docket No. 26000). Based on the agreement of the parties at the July 23, 2002, prehearing conference and the Commission's limitation in the WTU case, the ALJ grants Reliant's request to limit this proceeding. Accordingly, the customer cost allocation issues will not be considered in this proceeding but will be deferred to Reliant's true-up proceeding.

The ALJ approves of the Protective Order included in Reliant's Petition. At the July 23, 2002, prehearing conference, the ALJ approved of the protective order. The ALJ has signed the agreed protective order and has attached it to this Order.

SIGNED AT AUSTIN, TEXAS, the 15th day of August, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Michael J. O'Malley

MICHAEL J. O'MALLEY

ADMINISTRATIVE LAW JUDGE

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SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195

PETITION OF RELIANT ENERGY,	§	BEFORE THE PUBLIC UTILITY
INCORPORATED TO RECONCILE	§	
ELIGIBLE FUEL REVENUES AND	§	COMMISSION OF TEXAS
EXPENSES PURSUANT TO SUBST. R.	§	
25.236	§	

PROTECTIVE ORDER

This Protective Order shall govern the use of all information deemed confidential (Protected Materials) or highly confidential (Highly Sensitive Protected Materials) by a party providing information to the Public Utility Commission of Texas (Commission), including information whose confidentiality is currently under dispute.

It is ORDERED that:

1. Designation of Protected Materials. Upon producing or filing a document, including, but not limited to, records stored or encoded on a computer disk or other similar electronic storage medium in this proceeding, the producing party may designate that document, or any portion of it, as confidential pursuant to this Protective Order by typing or stamping on its face "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN SOAH DOCKET NO. 473-02-3473" or "PROTECTED PURSUANT TO PROTECTIVE ORDER ISSUED IN RELIANT ENERGY'S FINAL FUEL RECONCILIATION FILING" or words to this effect and consecutively Bates stamping each page. Protected Materials and Highly Sensitive Protected Materials include not only the documents so designated, but also the substance of the information contained in the documents and any description, report, summary, or statement about the substance of the information contained in the documents.
2. Materials Excluded from Protected Materials Designation. Protected Materials shall not include any information or document contained in the public files of the Commission or

any other federal or state agency, court, or local governmental authority subject to the Texas Public Information Act. Protected Materials also shall not include documents or information which at the time of, or prior to disclosure in a proceeding, is or was public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

3. Reviewing Party. For the purposes of this Protective Order, a Reviewing Party is a party to this docket.
4. Procedures for Designation of Protected Materials. On or before the date the Protected Materials or Highly Sensitive Protected Materials are provided to the Commission, the producing party shall file with the Commission and deliver to each party to the proceeding a written statement, which may be in the form of an objection, indicating: (1) any and all exemptions to the Public Information Act, TEX. GOV'T CODE ANN., Chapter 552, claimed to be applicable to the alleged Protected Materials; (2) the reasons supporting the providing party's claim that the responsive information is exempt from public disclosure under the Public Information Act and subject to treatment as protected materials; and (3) that counsel for the providing party has reviewed the information sufficiently to state in good faith that the information is exempt from public disclosure under the Public Information Act and merits the Protected Materials designation.
5. Persons Permitted Access to Protected Materials. Except as otherwise provided in this Protective Order, a Reviewing Party shall be permitted access to Protected Materials only through its Reviewing Representatives who have signed the Protective Order Certification Form. Reviewing Representatives of a Reviewing Party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in these proceedings. At the request of the Commissioners or their staff, copies of Protected Materials may be provided by the Commission's Staff (Staff) including the Policy Development Division to the Commissioners. The Commissioners and their staff shall be informed of the existence and coverage of this Protective Order and shall observe the restrictions of the Protective Order.
6. Highly Sensitive Protected Material Described. The term Highly Sensitive Protected Materials is a subset of Protected Materials and refers to documents or information which

a producing party claims is of such a highly sensitive nature that making copies of such documents or information or providing access to such documents to employees of the Reviewing Party (except as set forth herein) would expose a producing party to unreasonable risk of harm, including but not limited to: (1) customer-specific information protected by § 32.101(c) of the Public Utility Regulatory Act; (2) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the producing party is a party; (3) market-sensitive fuel or power price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (4) business operations or financial information that is commercially sensitive. Documents or information so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN SOAH DOCKET NO. 473-02-3473" or "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO PROTECTIVE ORDER ISSUED IN RELIANT ENERGY'S FINAL FUEL RECONCILIATION FILING" or words to this effect and shall be consecutively Bates stamped in accordance with the provisions of this Protective Order. The provisions of this Protective Order pertaining to Protected Materials also apply to Highly Sensitive Protected Materials, except where this Protective Order provides for additional protections for Highly Sensitive Protected Materials. In particular, the procedures herein for challenging the producing party's designation of information as Protected Materials also apply to information that a producing party designates as Highly Sensitive Protected Materials.

7. Restrictions on Copying and Inspection of Highly Sensitive Protected Material. Except as expressly provided herein, only one copy may be made of any Highly Sensitive Protected Materials except that additional copies may be made in order to have sufficient copies for introduction of the material into the evidentiary record if the material is to be offered for admission into the record. A record of any copies that are made of Highly Sensitive Protected Material shall be kept and a copy of the record shall be sent to the producing party at the time the copy or copies are made. The record shall include information on the location and the person in possession of the copy. Highly Sensitive Protected Material shall be made available for inspection only at the location or locations provided

by the producing party, except as provided by Paragraph 9. Limited notes may be made of Highly Sensitive Protected Materials, and such notes shall themselves be treated as Highly Sensitive Protected Materials unless such notes are limited to a description of the document and a general characterization of its subject matter in a manner that does not state any substantive information contained in the document.

8. Restricting Persons Who May Have Access to Highly Sensitive Protected Material. With the exception of Staff and the Office of Public Utility Counsel (OPC), and except as provided herein, the Reviewing Representatives for the purpose of access to Highly Sensitive Protected Materials may be persons who are: (1) outside counsel for the Reviewing Party; (2) outside consultants for the Reviewing Party working under the direction of Reviewing Party's counsel; or (3) employees of the Reviewing Party working with and under the direction of Reviewing Party's counsel who have been authorized by the presiding officer to review Highly Sensitive Protected Materials. The Reviewing Party shall limit the number of Reviewing Representatives that review each Highly Sensitive Protected document to the minimum number of persons necessary. The Reviewing Party is under a good faith obligation to limit access to each portion of any Highly Sensitive Protected Materials to two Reviewing Representatives whenever possible. Reviewing Representatives for Staff and OPC, for the purpose of access to Highly Sensitive Protected Materials, shall consist of their respective counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by them and directly engaged in these proceedings.
9. Copies Provided of Highly Sensitive Protected Material. A producing party shall provide one copy of Highly Sensitive Protected Materials specifically requested by the Reviewing Party to the person designated by the Reviewing Party who must be a person authorized to review Highly Sensitive Protected Material under Paragraph 8. and be either outside counsel or an outside consultant. Other representatives of the reviewing party who are authorized to view Highly Sensitive Protected Material may review the copy of Highly Sensitive Protected Materials at the office of the Reviewing Party's representative designated to receive the information. Any Highly Sensitive Protected documents provided to a Reviewing Party may not be copied except as provided in Paragraph 7 and

shall be returned along with any copies made pursuant to Paragraph 7 to the producing party within two weeks after the close of the evidence in this proceeding. The restrictions contained herein do not apply to Staff, OPC, and the Office of the Attorney General (OAG) when the OAG is representing a party to the proceeding. When Staff is the Reviewing Party, the producing party shall file two copies of the Highly Sensitive Protected Material, under seal, with the Commission's filing clerk. One copy will be kept by the Commission's Legal Division and the other will be kept by the Commission's Central Records. If the Commission's Policy Development Division determines that the Legal Division's copy of the Highly Sensitive Protected Material is required for the appellate record, then the Legal Division shall provide the Policy Development Division the requested Highly Sensitive Protected Material and shall maintain a record of the Highly Sensitive Protected Material provided to the Policy Development Division.

10. Procedures in Paragraphs 10-14 Apply to Staff, OPC, and the OAG and Control in the Event of Conflict. The procedures set forth in Paragraphs 10 through 14 apply to responses to requests for documents or information that the producing party designates as Highly Sensitive Protected Materials and provides to Staff, OPC, and the OAG in recognition of their purely public functions. To the extent the requirements of Paragraphs 10 through 14 conflict with any requirements contained in other paragraphs of this Protective Order, the requirements of these Paragraphs shall control.
11. Copy of Highly Sensitive Protected Material to be Provided to Staff, OPC, and the OAG. When, in response to a request for information by a Reviewing Party, the producing party makes available for review documents or information claimed to be Highly Sensitive Protected Materials, the producing party shall also deliver one copy of the Highly Sensitive Protected Materials to OPC (if OPC is a party), and the OAG (if the OAG is representing a party), and two copies, under seal, to the Commission's filing clerk (one to be kept by the Commission's Legal Division and one by the Commission's Central Records) in Austin, Texas. Provided however, that in the event such Highly Sensitive Protected Materials are voluminous, the materials will be made available for review by Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) at the designated office in Austin, Texas. The Staff, OPC (if OPC is a party), and the OAG (if

the OAG is representing a party) may request such copies as are necessary of such voluminous material under the copying procedures set forth herein.

12. Delivery of the Copy of Highly Sensitive Protected Material to Staff and Outside Consultants. The Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by them to the appropriate members of their staff for review, provided such staff members first sign the certification provided in Paragraph 15. After obtaining the agreement of the producing party, Staff, OPC, and the OAG (if the OAG is representing a party) may deliver the copy of Highly Sensitive Protected Materials received by it to the agreed, appropriate members of their outside consultants for review, provided such outside consultants first sign the certification attached hereto.
13. Restriction on Copying by Staff, OPC, and the OAG. Except as allowed by Paragraph 7, Staff, OPC, and the OAG may not make additional copies of the Highly Sensitive Protected Materials furnished to them unless the producing party agrees in writing otherwise, or, upon a showing of good cause, the Presiding Officer directs otherwise. Limited notes may be made by Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) of Highly Sensitive Protected Materials furnished to them and all such handwritten notes will be treated as Highly Sensitive Protected Materials as are the materials from which the notes are taken.
14. Public Information Requests. In the event of a request for any of the Highly Sensitive Protected Materials under the Public Information Act, an authorized representative of the Commission OPC, or the OAG may furnish a copy of the requested Highly Sensitive Protected Materials to the Open Records Division at the OAG together with a copy of this Protective Order after notifying the producing party that such documents are being furnished to the OAG. Such notification may be provided simultaneously with the delivery of the Highly Sensitive Protected Materials to the OAG.
15. Required Certification. Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification set forth in the attachment to this Protective Order:

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy

of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in SOAH Docket No. 473-02-3473. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

In addition, Reviewing Representatives who are permitted access to Highly Sensitive Protected Material under the terms of this Protective Order shall, before inspection of such material, agree in writing to the following certification set forth in the Attachment to this Protective Order:

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

A copy of each signed certification shall be provided by the reviewing party to counsel for the producing party and served upon all parties of record.

16. Disclosures Between Reviewing Representatives and Continuation of Disclosure Restrictions After a Person is No Longer Engaged in the Proceeding. Any Reviewing Representative may disclose Protected Materials, other than Highly Sensitive Protected Materials, to any other person who is a Reviewing Representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to the party asserting confidentiality, that certification shall be executed prior to any disclosure. A Reviewing Representative may disclose Highly Sensitive Protected Material to other Reviewing Representatives who are permitted access to such material and have executed the additional certification required for persons who receive access to Highly Sensitive Protected Material. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, access to Protected Materials by that person shall be terminated and all notes, memoranda, or other information derived from the protected material shall either be destroyed or given to another Reviewing Representative of that

party who is authorized pursuant to this Protective Order to receive the protected materials. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Protective Order so long as it is in effect, even if no longer engaged in these proceedings.

17. Producing Party to Provide One Copy of Certain Protected Material and Procedures for Making Additional Copies of Such Materials. Except for Highly Sensitive Protected Materials which shall be provided to the Reviewing Parties pursuant to Paragraphs 9 and 11, and voluminous Protected Materials, the producing party shall provide a Reviewing Party one copy of the Protected Materials upon receipt of the signed certification described in Paragraph 15. Except for Highly Sensitive Protected Materials, a Reviewing Party may make further copies of Protected Materials for use in this proceeding pursuant to this Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and upon request the Reviewing Party shall provide the party asserting confidentiality with a copy of that record. When Staff is the Reviewing Party, the producing party shall file two copies of the Protected Material, under seal, with the Commission's filing clerk. One copy will be kept by the Commission's Legal Division and the other will be kept by the Commission's Central Records. If the Commission's Policy Development Division determines that the Legal Division's copy of the Protected Material is required for the appellate record, then the Legal Division shall provide the Policy Development Division the requested Protected Material and shall maintain a record of the Protected Material provided to the Policy Development Division.
18. Procedures Regarding Voluminous Protected Materials. Production of voluminous Protected Materials will be governed by P.U.C. PROC. R. 22.144(h). Voluminous Protected Materials will be made available in the producing party's voluminous room, in Austin, Texas, or at a mutually agreed upon location. Monday through Friday, 9:00 a.m. to 5:00 p.m. (except on state or Federal holidays), and at other mutually convenient times upon reasonable request.
19. Reviewing Period Defined. The Protected Materials may be reviewed only during the Reviewing Period, which shall commence upon entry of this Protective Order and continue until the expiration of the Commission's plenary jurisdiction. The Reviewing Period shall reopen if the Commission regains jurisdiction due to a remand as provided

by law. Protected materials that are admitted into the evidentiary record or accompanying the evidentiary record as offers of proof may be reviewed throughout the pendency of this proceeding and any appeals.

20. Procedures for Making Copies of Voluminous Protected Materials. Other than Highly Sensitive Protected Materials, Reviewing Parties may take notes regarding the information contained in voluminous Protected Materials made available for inspection or they may make photographic, mechanical, or electronic copies of the Protected Materials, subject to the conditions hereof; provided, however, that before photographic, mechanical, or electronic copies can be made, the Reviewing Party seeking photographic, mechanical, or electronic copies must complete a written receipt for copies on the attached form identifying each piece of Protected Materials or portions thereof the Reviewing Party will need.
21. Protected Materials to be Used Solely for the Purposes of These Proceedings. All Protected Materials shall be made available to the Reviewing Parties and their Reviewing Representatives solely for the purposes of these proceedings. Access to the Protected Materials may not be used in the furtherance of any other purpose, including, without limitation: (1) any other pending or potential proceeding involving any claim, complaint, or other grievance of whatever nature, except appellate review proceedings that may arise from or be subject to these proceedings; or (2) any business or competitive endeavor of whatever nature. Because of their statutory regulatory obligations, these restrictions do not apply to Staff or OPC.
22. Procedures for Confidential Treatment of Protected Materials and Information Derived from those Materials. Protected Materials, as well as a Reviewing Party's notes, memoranda, or other information regarding or derived from the Protected Materials are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall be maintained in a secure place and shall not be placed in the public or general files of the Reviewing Party except in accordance with the provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to insure that the Protected Materials including notes and analyses

made from Protected Materials that disclose Protected Materials are not viewed or taken by any person other than a Reviewing Representative of a Reviewing Party.

23. Procedures for Submission of Protected Materials. If a Reviewing Party tenders for filing any Protected Materials, including Highly Sensitive Protected Materials, or any written testimony, exhibit, brief, motion, or other type of pleading or other submission at the Commission or before any other judicial body that quotes from Protected Materials or discloses the content of Protected Materials, the confidential portion of such submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they contain Protected Material or Highly Sensitive Protected Material and are sealed pursuant to this Protective Order. If filed at the Commission, such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the Presiding Officer and served under seal to the counsel of record for the Reviewing Parties. The Presiding Officer may subsequently, on his/her own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation or reference to Protected Materials is such that such submission should remain under seal. If filing before a judicial body, the filing party: (1) shall notify the party which provided the information within sufficient time so that the providing party may seek a temporary sealing order; and (2) shall otherwise follow the procedures set forth in Rule 76a, Texas Rules of Civil Procedure.
24. Maintenance of Protected Status of Materials During Pendency of Appeal of Order Holding Materials are Not Protected Materials. In the event that the Presiding Officer at any time in the course of this proceeding finds that all or part of the Protected Materials are not confidential or proprietary, by finding, for example, that such materials have entered the public domain or materials claimed to be Highly Sensitive Protected Materials are only Protected Materials, those materials shall nevertheless be subject to the protection afforded by this Protective Order for three (3) full working days, unless otherwise ordered, from the date the party asserting confidentiality receives notice of the Presiding Officer's order. Such notification will be by written communication. This provision establishes a deadline for appeal of a Presiding Officer's order to the Commission. In the event an appeal to the Commissioners is filed within those three (3) working days from notice, the Protected Materials shall be afforded the confidential

treatment and status provided in this Protective Order during the pendency of such appeal. Neither the party asserting confidentiality nor any Reviewing Party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

25. Notice of Intent to Use Protected Materials or Change Materials Designation. Parties intending to use Protected Materials shall notify the other parties prior to offering them into evidence or otherwise disclosing such information into the record of the proceeding. During the pendency of SOAH Docket No. 473-02-3473 at the Commission, in the event that a Reviewing Party wishes to disclose Protected Materials to any person to whom disclosure is not authorized by this Protective Order, or wishes to have changed the designation of certain information or material as Protected Materials by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of such Protected Materials. A Reviewing Party shall at any time be able to file a written motion to challenge the designation of information as Protected Materials.
26. Procedures to Contest Disclosure or Change in Designation. In the event that the party asserting confidentiality wishes to contest a proposed disclosure or request for change in designation, the party asserting confidentiality shall file with the appropriate Presiding Officer its objection to a proposal, with supporting affidavits, if any, within five (5) working days after receiving such notice of proposed disclosure or change in designation. Failure of the party asserting confidentiality to file such an objection within this period shall be deemed a waiver of objection to the proposed disclosure or request for change in designation. Within five (5) working days after the party asserting confidentiality files its objection and supporting materials, the party challenging confidentiality may respond. Any such response shall include a statement by counsel for the party challenging such confidentiality that he or she has reviewed all portions of the materials in dispute and without disclosing the Protected Materials, a statement as to why the Protected Materials should not be held to be confidential under current legal standards, or alternatively that the party asserting confidentiality for some reason did not allow such counsel to review such materials. If either party wishes to submit the material in question for in camera

inspection, it shall do so no later than five (5) working days after the party challenging confidentiality has made its written filing.

27. Procedures for Presiding Officer Determination Regarding Proposed Disclosure or Change in Designation. If the party asserting confidentiality files an objection, the appropriate Presiding Officer will determine whether the proposed disclosure or change in designation is appropriate. Upon the request of either the producing or reviewing party or upon the presiding officer's own initiative, the presiding officer may conduct a prehearing conference. The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the Presiding Officer determines that such proposed disclosure or change in designation should be made, disclosure shall not take place earlier than three (3) full working days after such determination unless otherwise ordered. No party waives any right to seek additional administrative or judicial remedies concerning such Presiding Officer's ruling.
28. Maintenance of Protected Status During Periods Specified for Challenging Various Orders. Any party electing to challenge, in the courts of this state, a Commission or Presiding Officer determination allowing disclosure or a change in designation shall have a period of ten (10) days from: (1) the date of an unfavorable Commission order; or (2) if the Commission does not rule on an appeal of an interim order, the date an appeal of an interim order to the Commission is overruled by operation of law, to obtain a favorable ruling in state district court. Any party challenging a state district court determination allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from a state appeals court. Finally, any party challenging a determination of a state appeals court allowing disclosure or a change in designation shall have an additional period of ten (10) days from the date of the order to obtain a favorable ruling from the state supreme court, or other appellate court. All Protected Materials shall be afforded the confidential treatment and status provided for in this Protective Order during the periods for challenging the various orders referenced in this Paragraph. For purposes of this Paragraph, a favorable ruling of a state district court, state appeals court, supreme court or other appellate court includes any order extending the deadlines set forth in this Paragraph.

29. Other Grounds for Objection to Use of Protected Materials Remain Applicable. Nothing in this Protective Order shall be construed as precluding any party from objecting to the use of Protected Materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Protective Order constitutes a waiver of the right to argue for more disclosure, provided, however, that unless and until such additional disclosure is ordered by the Commission or a court, all parties will abide by the restrictions imposed by the Protective Order.
30. Protection of Materials from Unauthorized Disclosure. All notices, applications, responses, or other correspondence shall be made in a manner which protects Protected Materials from unauthorized disclosure.
31. Return of Copies of Protected Materials and Destruction of Information Derived from Protected Materials. Following the conclusion of these proceedings, each Reviewing Party must, no later than thirty (30) days following receipt of the notice described below, return to the party asserting confidentiality all copies of the Protected Materials provided by that party pursuant to this Protective Order and all copies reproduced by a Reviewing Party, and counsel for each Reviewing Party must provide to the party asserting confidentiality a letter by counsel that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the Protected Materials (including copies of Protected Materials) that have not been so returned, if any, have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of the substance of Protected Materials. As used in this Protective Order, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law. If, following any appeal, the Commission conducts a remand proceeding, then the "conclusion of these proceedings" is extended by the remand to the exhaustion of available appeals of the remand, or the running of the time for making such appeals of the remand, as provided by applicable law. Promptly following the conclusion of these proceedings, counsel for the party asserting confidentiality will send a written notice to all other parties, reminding them of their obligations under this Paragraph. Nothing in this Paragraph shall prohibit counsel for each Reviewing Party from retaining two (2)

copies of any filed testimony, brief, application for rehearing, hearing exhibit, or other pleading which refers to Protected Materials provided that any such Protected Materials retained by counsel shall remain subject to the provisions of this Protective Order.

32. Applicability of Other Law. This Protective Order is subject to the requirements of the Public Information Act, the Open Meetings Act, and any other applicable law, provided that parties subject to those acts will give the party asserting confidentiality notice, if possible under those acts, prior to disclosure pursuant to those acts.
33. Procedures for Release of Information Under Order. If required by order of a governmental or judicial body, the Reviewing Party may release to such body the confidential information required by such order; provided, however, that: (1) the Reviewing Party shall notify the party asserting confidentiality of such order at least five (5) calendar days in advance of the release of the information in order for the party asserting confidentiality to contest any release of the confidential information; (2) the Reviewing Party shall notify the producing party that there is a request for such information within five (5) calendar days of the date the Reviewing Party is notified of the request for information; and (3) the Reviewing Party shall use its best efforts to prevent such materials from being disclosed to the public. The terms of this Protective Order do not preclude the Reviewing Party from complying with any valid and enforceable order of a state or federal court with competent jurisdiction specifically requiring disclosure of Protected Materials earlier than contemplated herein.
34. Best Efforts Defined. The term "best efforts" as used in the preceding paragraph requires that the Reviewing Party attempt to ensure that disclosure is not made unless such disclosure is pursuant to a final order of a Texas governmental or Texas judicial body or written opinion of the Texas Attorney General which was sought in compliance with the Public Information Act. The Reviewing Party is not required to delay compliance with a lawful order to disclose such information but is simply required to timely notify the party asserting confidentiality, or its counsel, that it has received a challenge to the confidentiality of the information and that the Reviewing Party will either proceed under the provisions of §552.301 of the Public Information Act, or intends to comply with the final governmental or court order.

35. Notify Defined. Notify, for purposes of Paragraphs 33 and 34, shall mean written notice to the party asserting confidentiality at least five (5) calendar days prior to release; including when a Reviewing Party receives a request under the Public Information Act. However, the Commission or OPC may provide a copy of Protected Materials to the Open Records Division of the OAG as provided herein.
36. Requests for Non-Disclosure. If the producing party asserts that the requested information should not be disclosed at all, or should not be disclosed to certain parties under the protection afforded by this Order, the producing party shall tender the information for in camera review to the presiding officers within 10 calendar days of the request. At the same time, the producing party shall file and serve on all parties its argument, including any supporting affidavits, in support of its position of non-disclosure. The burden is on the producing party to establish that the material should not be disclosed. The producing party shall serve a copy of the information under the classification of Highly Sensitive Protected Material to all parties requesting the information that the producing party has not alleged should be prohibited from reviewing the information. Parties wishing to respond to the producing party's argument for non-disclosure shall do so within five working days. Responding parties should explain why the information should be disclosed to them, including why disclosure is necessary for a fair adjudication of the case if the material is determined to constitute a trade secret. If the presiding officer finds that the information should be disclosed as Protected Material under the terms of this Protective Order, the presiding officer shall stay the order of disclosure for such period of time as the presiding officer deems necessary to allow the producing party to appeal the ruling to the commission.
37. Sanctions Available for Abuse of Designation. If the presiding officer finds that a producing party unreasonably designated material as Protected Material or as Highly Sensitive Protected Material, or unreasonably attempted to prevent disclosure pursuant to Paragraph 36, the presiding officer may sanction the producing party pursuant to P.U.C. PROC. R. 22.161.
38. Modification of Protective Order. Each party shall have the right to seek changes in this Protective Order as appropriate from the presiding officer.

39. Breach of Protective Order. In the event of a breach of the provisions of this Protective Order, the producing party, if it sustains its burden of proof required to establish the right to injunctive relief, shall be entitled to an injunction against such breach without any requirements to post bond as a condition of such relief. The producing party shall not be relieved of proof of any element required to establish the right to injunctive relief. In addition to injunctive relief, the producing party shall be entitled to pursue any other form of relief to which it is entitled.

SIGNED AT AUSTIN, TEXAS as of the 15th day of August, 2002.

Michael J. O'Nally
Administrative Law Judge

Protective Order Certification

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in this docket, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, any notes, memoranda, or any other form of information regarding or derived from the Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order and unless I am an employee of the Commission or OPC shall be used only for the purpose of the proceeding in SOAH Docket No. 473-02-3473. I acknowledge that the obligations imposed by this certification are pursuant to such Protective Order. Provided, however, if the information contained in the Protected Materials is obtained from independent public sources, the understanding stated herein shall not apply.

Signature

Party Represented

Printed Name

Date

I certify that I am eligible to have access to Highly Sensitive Protected Material under the terms of the Protective Order in this docket.

Signature

Party Represented

Printed Name

Date

SOAH DOCKET NO. 473-02-3473

I request to view/copy the following documents:

Document requested	# of Copies	Non-Confidential	Confidential &/or H.S.

Signature

Party Represented

Printed Name

Date

SOAH DOCKET NO. 473-02-3473

PUC DOCKET NO. 26195

APPLICATION OF RELIANT ENERGY,
INC. TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES

§
§
§
§
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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

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FILED IN 02-3473

**ORDER NO. 5
GRANTING MOTION TO INTERVENE**

On August 15, 2002, Occidental Chemical Corporation (OxyChem) filed a motion to intervene in this proceeding. No party has objected to OxyChem's intervention. OxyChem stated that it purchased substantial quantities of electricity from Reliant Energy, Incorporated (Reliant) during the reconciliation period. As a ratepayer of Reliant, OxyChem has shown a justiciable interest which may be adversely affected by the outcome of this proceeding; therefore, it has standing to participate in this proceeding. Accordingly, the Administrative Law Judge grants OxyChem's motion to intervene.

SIGNED AT AUSTIN, TEXAS the 20th day of August 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



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



SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195

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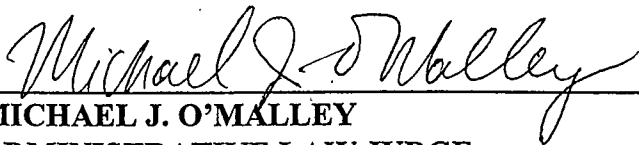
APPLICATION OF RELIANT ENERGY, § BEFORE THE STATE OFFICE
INC. TO RECONCILE ELIGIBLE FUEL §
REVENUES AND EXPENSES § OF
§
§ ADMINISTRATIVE HEARINGS

ORDER NO. 6
REGARDING RATE CASE EXPENSES

This Order inquires as to whether Reliant Energy, Inc. (Reliant) intends to contest reimbursement of rate case expenses to the various Cities involved in this case. Specifically, the Administrative Law Judge is interested in whether Reliant believes it is required to reimburse the municipalities for their rate case expenses incurred by their participation in this proceeding. Reliant shall respond to this Order by September 9, 2002.

SIGNED AT AUSTIN, TEXAS the 29th day of August 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195

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JOINT APPLICATION OF TEXAS § BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT § PUBLIC UTILITY COMMISSION
ENERGY HOUSTON ELECTRIC, LLC § FILING CLERK
TO RECONCILE ELIGIBLE FUEL § OF
REVENUES AND EXPENSES § ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236 §

ORDER NO. 8

GRANTING JOINT MOTION FOR CONTINUANCE, MOTION FOR EXTENDED
PROCEDURAL SCHEDULE, AND MOTION FOR EXPEDITED CONSIDERATION

On October 7, 2002, the City of Houston, joined by Texas Industrial Energy Consumers, Gulf Coast Coalition of Cities, and Office of Public Utility Commission (collectively, Intervenor) filed a Joint Motion for Continuance, Motion to Extend Procedural Schedule, and Motion for Expedited Consideration.¹ On October 11, 2002, CenterPoint Energy Houston Electric, LLC and Texas Genco, LP (CenterPoint) filed a response, opposing the motions.

Intervenor seeks an eight-week extension of the procedural schedule for the following reasons:

- The scope of this fuel reconciliation, both in time period and monetary amount, is the largest to be addressed by the Commission to date;
- CenterPoint filed 313 pages of errata on October 2, 2002; and
- There is a conflict with this case and the schedule in the WTU fuel reconciliation proceeding.

CenterPoint opposes the motions for the following reasons:

- P.U.C. SUBST. R. 25.236(g) imposes an eight-month regulatory deadline;
- Having waited six weeks to begin discovery, Intervenor should not be allowed to complain of insufficient time to conduct discovery;
- Intervenor knew of the scope of this proceeding before the Application was filed and before the procedural schedule was set;

¹ Commission Staff and Alliance for Retail Markets support the motions filed by Intervenor.

- CenterPoint disagrees with Intervenor's assessment of the scope and complexity of this proceeding;
- CenterPoint disagrees with the argument that the WTU fuel case conflicts with this case; and
- CenterPoint's disagrees with Intervenor's that the errata should be the basis for an eight-week extension.

On October 14, 2002, the City of Houston replied to CenterPoint's objections and stated:

- All parties, with the exception of CenterPoint, agree that additional time is needed;
- Intervenor's have exercised due diligence in the discovery process;
- The complexity and scope of proceeding could not be fully ascertained by parties until a complete review of the Application was completed;
- CenterPoint's filing of errata at a late date further necessitates additional time; and
- There will be no harm to CenterPoint if the schedule is extended.

The Administrative Law Judges (ALJs) grant the Motion for Continuance and Motion to Extend the Procedural Schedule for the following reasons. First, the scope of this proceeding is substantial. The fuel expenses total approximately \$8.5 billion and the reconciliation period spans for a four and a half year period. Second, almost all Intervenor's agree that additional time is needed for additional discovery and to evaluate the information in CenterPoint's Application. Third, the errata will require more review for all Intervenor's. Fourth, after reviewing CenterPoint's substantial Application, it became apparent to the Intervenor's that additional time would be needed. Finally, CenterPoint will not be harmed by the extension of the procedural schedule. This proceeding will result in a fuel balance that will be considered by the Commission in CenterPoint's 2004 true-up proceeding. This proceeding will not result in a rate adjustment until the Commission considers it along with other adjustments during the 2004 true-up. For the reasons stated above, the ALJs find good cause, pursuant to P.U.C. SUBST. R. 25.3, to extend indefinitely the March 1, 2003 regulatory deadline.

Accordingly, the procedural schedule in this proceeding is extended as follows:

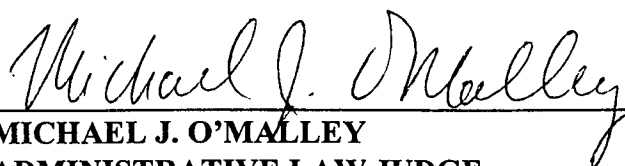
- * December 13, 2002: Discovery on CenterPoint ends.
- * December 31, 2002: Deadline for Intervenor testimony.
- * January 7, 2003: Deadline for objections to Intervenor testimony.
- * January 7, 2003: Deadline for Staff testimony.
- * January 14, 2003: Deadline for responses to objections to Intervenor testimony.
- * January 14, 2003: Deadline for objections to Staff testimony.
- * January 21, 2003: Deadline for rebuttal testimony.
- * January 21, 2003: Deadline for responses to objections to Staff testimony.
- * January 24, 2003: Objections to rebuttal testimony; responses to objections (at hearing).

In order to participate at the hearing, parties who choose not to file direct testimony in this matter must file a Statement of Position at the time Intervenor testimony is due. The Statement of Position should reflect with specificity the issues the party intends to contest and the party's position on those issues. CenterPoint shall file a status report on December 20, 2002, and January 17, 2003, updating the ALJs on settlement of this case.

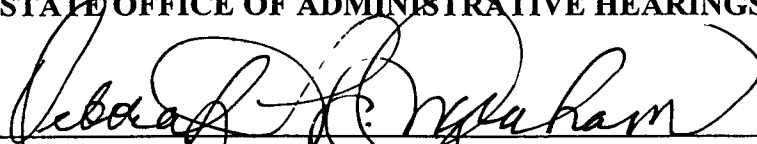
All parties are hereby notified that a hearing on the merits of the application will begin at 9:00 a.m., **January 28, 2003**, in a SOAH hearing room on the 4th floor of the William P. Clements State Office Building, 300 W. 15th St., Austin, Texas, and will continue from day to day until concluded. The hearing is tentatively scheduled to last until February 7, 2003.

Because the ALJs have continued this case for approximately eight weeks, the 20-day turnaround for responses to discovery will apply.

ISSUED the 15th day of October 2002.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195

JOINT APPLICATION OF TEXAS § BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT §
ENERGY HOUSTON ELECTRIC, LLC §
TO RECONCILE ELIGIBLE FUEL §
REVENUES AND EXPENSES § ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236 §

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ORDER NO. 9

GRANTING IN PART AND DENYING IN PART TEXAS GENCO, LP AND
CENTERPOINT ENERGY HOUSTON ELECTRIC, LLC'S MOTION TO COMPEL

On November 12, 2002, the City of Houston (Houston) filed objections to CenterPoint Energy Houston Electric, LLC's (CenterPoint's) First Request for Information (RFI) and requested that the Administrative Law Judge (ALJ) enter an order protecting Houston from this type of discovery until it has made a final determination regarding the witnesses that will prepare testimony on its behalf in this proceeding. Houston claims that the discovery sought by CenterPoint is inappropriate at this time because Houston has not determined who will be testifying on its behalf in this proceeding. On November 19, 2002, CenterPoint filed a Motion to Compel arguing that its First RFI is relevant discovery under P.U.C. PROC. R. 22.144(a).

The ALJ agrees with CenterPoint that the questions contained in CenterPoint's First RFI may be relevant and reasonably calculated to lead to the discovery of admissible evidence, but the ALJ agrees with Houston that these questions are premature. Therefore, Houston will not be required to respond to these questions at this time; however, Houston shall respond to these questions no later than Tuesday, December 17, 2002, if Houston determines that Ms. Pitchford will testify as a witness on its behalf in this case.¹ If Houston objects to any questions on relevance or privilege grounds, it will need to object to those specific questions no later than Friday, December 13, 2002.²


¹ If Houston determines that Ms. Pitchford will not be a witness in this case, then it needs to inform the parties and the ALJ as soon as that decision is made.

² From a preliminary review of the questions in CenterPoint's First RFI, the ALJ believes that most of the questions are relevant if Ms. Pitchford testifies on behalf of Houston.


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The ALJ noticed that on November 19, 2002, the Office of Public Utility Counsel (OPC) filed similar objections to CenterPoint's First RFI. If Mr. Falkenberg testifies on behalf of OPC, the ALJ's ruling in this Order applies. Furthermore, the date for responding to the discovery, December 17, 2002, also applies. If OPC has objections to specific questions, those objections shall be filed no later than December 13, 2002.

ISSUED the 20th day of November 2002.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 473-02-3473

PUC DOCKET NO. 26195

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JOINT APPLICATION OF TEXAS
GENCO, LP AND CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES
PURSUANT TO SUBST. R. 25.236

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BEFORE THE STATE OFFICE

PUBLIC UTILITY OF HOUSTON
FILING CLERK

OF

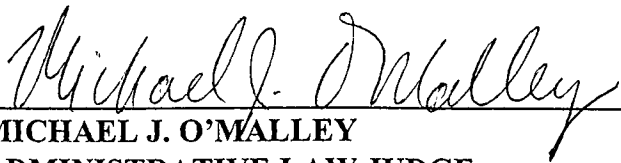
ADMINISTRATIVE HEARINGS

ORDER NO. 10

**GRANTING IN PART AND DENYING IN PART CITY OF HOUSTON'S MOTION TO
COMPEL RESPONSES TO ITS NINETEENTH REQUEST FOR INFORMATION**

On November 20, 2002, the City of Houston (Houston) filed a Motion to Compel Responses to its Nineteenth Request for Information. On November 21, 2002, CenterPoint Energy Houston Electric, LLC and Texas Genco, LP (CenterPoint) filed a response. CenterPoint has agreed to make available to Houston the necessary documents for Houston to find the answers to its questions. The Administrative Law Judge (ALJ) finds that this approach is reasonable given the nature of the questions. Although the questions may be relevant and reasonably calculated to lead to the discovery of admissible evidence, they also deal with issues that occurred 9 to 14 years ago. If Houston seeks to discovery on these remote issues, it needs to assume some of the responsibility of obtaining the information. Accordingly, Houston's motion to compel is granted. Houston can discover this information. However, because the information is voluminous, Houston will need to go to CenterPoint's voluminous room to search for and obtain this information. CenterPoint should make every effort to separate and identify the documents that Houston will need to search so that Houston's task does not become too burdensome.

ISSUED the 22nd day of November 2002.


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

505



SOAH DOCKET NO. 473-02-3473

PUC DOCKET NO. 26195


JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	OF
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 12

DENYING TEXAS GENCO AND CENTERPOINT ENERGY HOUSTON ELECTRIC'S MOTION TO COMPEL OPC TO RESPOND TO FIRST REQUEST FOR INFORMATION ABOUT MR. FALKENBERG

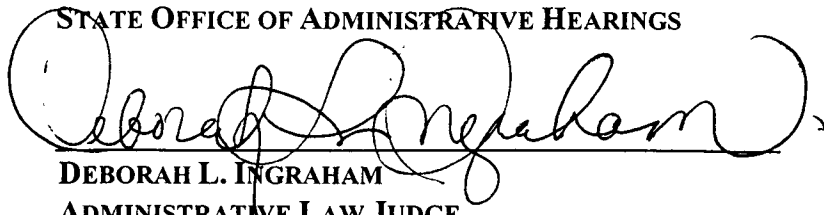
On December 20, 2002, Texas Genco, LP and CenterPoint Energy Houston Electric, LLC's (CenterPoint) moved to compel the Office of Public Utility Counsel (OPC) to respond to its first set of requests for information (RFIs). CenterPoint sought an expedited ruling. On January 2, 2003, OPC responded to the motion. The questions in this RFI are similar to the questions CenterPoint asked the City of Houston with respect to Ms. Pitchford. The Administrative Law Judges (ALJs) ruled on those questions in Order No. 11. The ALJs ruling in Order No. 11 applies to the questions CenterPoint asked OPC about Mr. Falkenberg. The ALJs further find that OPC adequately responded to CenterPoint's first RFI and provided further explanations in its response to the motion to compel. Accordingly, CenterPoint's Motion to Compel OPC to Respond to its First RFI is denied.

ISSUED this 3rd day of January, 2003.


MICHAEL J. O'MALLEY

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS


DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	OF
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 11

DENYING TEXAS GENCO AND CENTERPOINT ENERGY HOUSTON ELECTRIC'S MOTION TO COMPEL CITY OF HOUSTON TO RESPOND TO FIRST REQUEST FOR INFORMATION ABOUT MS. PITCHFORD AND REQUESTING THAT PARTIES NEGOTIATE CENTERPOINT'S MOTION TO COMPEL CITY OF HOUSTON TO RESPOND TO SECOND REQUEST FOR INFORMATION

In two separate motions filed December 16, 2002, Texas Genco, LP and CenterPoint Energy Houston Electric, LLC's (CenterPoint) moved to compel the City of Houston (Houston) to respond to its first and second sets of requests for information. CenterPoint sought expedited rulings requiring Houston's compliance by December 17, 2002. On December 17, 2002, Houston responded to the motion and objected to the expedited request.

CenterPoint's Motion to Compel responses to its first request for information (RFI) concerns the opinions of Houston witness Eileen Pitchford, whose prefiled testimony is due December 31, 2002. CenterPoint argues that its right to discover Ms. Pitchford's opinions is generally the same as the discovery rights available in non-administrative civil litigation and it contends that it does not have to wait for her prefiled testimony before conducting discovery. CenterPoint views as within those rights the RFIs seeking information about Ms. Pitchford's experience or opinions on risk management programs, terms used with electricity purchase or sale arrangements, fixed price positions, fixed price contracts risk, hedging, and coal negotiations. To each RFI Houston responded that the information sought falls outside the scope of the issues Ms. Pitchford will testify about and is, therefore, not relevant. Houston further asserted that the RFIs are not reasonably calculated to lead to the discovery of admissible evidence.

Ms. Pitchford is one of Houston's testifying expert witnesses. In non-administrative litigation, a party is entitled to obtain discovery concerning the subject matter on which the expert is expected to testify at trial. Tex. R. Civ. P. 195.4. Although depositions and expert reports are less

popular discovery devices in administrative cases, and were not ordered in this case, the other provisions of Tex. R. Civ. P. 195.4 apply equally well to experts who testify in regulatory hearings. Under those provisions, CenterPoint is entitled to conduct discovery on the *subject matter on which Ms. Pitchford is expected to testify*, her mental impressions and opinions about that subject matter known to her, the facts that relate to or form the basis for her mental impressions and opinions, other discoverable matters, and related documents.

CenterPoint complains that Houston is denying it discovery by limiting the scope of Ms. Pitchford's testimony, but the judges disagree. Houston has the right to designate its testifying expert for a particular subject matter. CenterPoint's motion also states that Houston's objections are unreasonable because Houston propounded the very same RFIs on CenterPoint's experts. Instead of *reverse-propounding* Houston's RFIs, if CenterPoint did not know what subject matter Ms. Pitchford would address, it should have propounded an RFI requesting the subject of her testimony to target its further queries. If CenterPoint then desired more detailed information, nothing prohibited it from taking Ms. Pitchford's deposition. *See* P.U.C PROC. R. 22.141(b).

The motion to compel responses to CenterPoint's first RFI is DENIED.¹ This order does not apply to Houston's objections to CenterPoint's first RFI Nos. 38 and 39; the agreement reflected in Mr. Pfeffer's December 16, 2002 letter will govern those two RFIs.

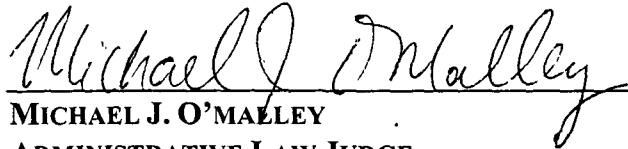
With respect to CenterPoint's Motion to Compel responses to its second RFI, the ALJs urge the parties to negotiate a resolution to this motion. Houston has now filed its direct testimony. CenterPoint shall review that testimony. If CenterPoint still has questions (such as those contained in its second RFI) after reviewing Houston's expert testimony, it shall submit a separate RFI to Houston.² By January 13, 2003, CenterPoint shall indicate whether the parties have resolved the

¹ CenterPoint also argued that Houston's objections were untimely filed. The judges accept Houston's explanation that the Commission's Central Record's office was closed from 2:00 p.m. until 3:00 p.m. on the due date set in Order No. 9 and they, therefore, decline to overrule the objections for that reason. (The judges did not know about the closure.)

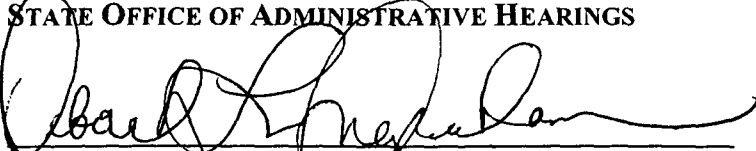
² If CenterPoint submits a separate RFI, objections, a motion to compel, and a response to the motion to compel shall be filed as required by the P.U.C. Procedural Rules.

questions in CenterPoint's second RFI to Houston.

ISSUED this 3rd day of January, 2003.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
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PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 14

**RULING ON TEXAS INDUSTRIAL ENERGY CONSUMERS MOTION TO COMPEL
CENTERPOINT'S RESPONSE TO ITS SECOND REQUEST FOR INFORMATION**

On December 13, 2002, Texas Industrial Energy Consumers (TIEC) filed a motion to compel Texas Genco, LP and CenterPoint Energy Houston Electric, LLC (collectively, CenterPoint) to respond to TIEC's second request for information (RFI). On December 23, 2002, CenterPoint filed a response. On January 3, 2003, TIEC filed a reply to CenterPoint's response.

TIEC states that the purpose of TIEC 2-1 is to collect summary information regarding prices, terms, and conditions of CenterPoint's firm energy purchased power contracts during the reconciliation period that were priced on an energy only basis. TIEC claims that it needs this information to determine whether the contracts were structured to provide capacity benefits to CenterPoint, and to ascertain whether the contracts were priced at levels that suggest the inclusion of implicit capacity costs in the energy-only prices.

CenterPoint never objected to TIEC 2-1 because it claims that it intended to fully respond to the question. CenterPoint asserts that it provided TIEC the necessary documents to obtain the answers to its RFI 2-1. CenterPoint, however, refused to compile the data in the summary format requested by TIEC. CenterPoint also claims that it informed TIEC that no summary form of this information existed. CenterPoint states that TIEC asked a similar question, TIEC 1-9, in October 2002, and it received the same answer.¹ CenterPoint further states that the information TIEC seeks exceeds eight linear feet, and it is being made available at CenterPoint's Houston offices.

¹ TIEC did not file a motion to compel regarding 1-9.

CenterPoint submitted the affidavit of Joseph Price, Manager of Fuels Acquisition, and the person responsible for compiling the information in TIEC 2-1. He states that CenterPoint does not maintain the information in the format requested by TIEC. He adds that the only way to provide the information in the format requested in TIEC 2-1 is to manually compile the information from the records that CenterPoint maintains. Mr. Price estimates that compiling and verifying this information would require at least 600 hours of work.

CenterPoint offered TIEC a compromise, and the Administrative Law Judges (ALJs) find that the compromise is the best solution to resolve this dispute. As CenterPoint notes, the information used to create the transaction confirmation pages that TIEC wants to have summarized is generated from what is called the ETRM database. CenterPoint no longer uses this database, and it does not have any personnel familiar with the database. While negotiating with TIEC, CenterPoint contracted with the vendor of this database to generate a report summarizing all the transactions in that database for the fuel reconciliation period. According to CenterPoint, this information could be downloaded to a spreadsheet that TIEC could use. In its reply, TIEC states that it would be extremely interested in the information from ETRM. TIEC states, however, that CenterPoint could not get TIEC the information in time for TIEC to include it in its testimony that was filed December 31, 2002. The ALJs order CenterPoint to provide the ETRM database information to TIEC as soon as possible, but no later than Friday, January 10, 2003. TIEC should begin to analyze the information, and on January 17, 2003, TIEC shall inform the ALJs if it believes a separate case should be created to address the issue of capacity costs embedded in CenterPoint's energy-only purchased power contracts.²

ISSUED this 6th day of January, 2003.


MICHAEL J. O'MALLEY

ADMINISTRATIVE LAW JUDGE


DEBORAH L. INGRAHAM

ADMINISTRATIVE LAW JUDGE

² If TIEC requests a separate docket be created, it shall indicate which parties support this request.

JOINT APPLICATION OF TEXAS
GENCO, LP AND CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES
PURSUANT TO SUBST. R. 25.236

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

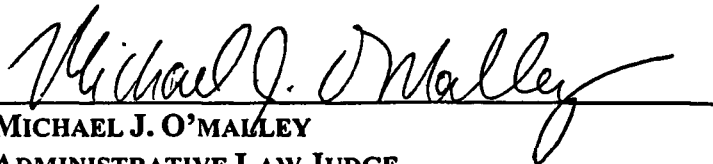
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ORDER NO. 13

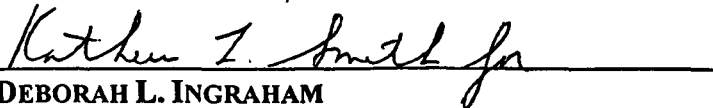
GRANTING JOINT MOTION TO BIFURCATE PROCEEDING

On December 23, 2002, the parties filed a joint motion to bifurcate this proceeding. The parties request the bifurcation of the limited issue of quantifying the effect on the underrecovery sought in this proceeding of (1) the 25755 Settlement and (2) ERCOT settlement statements for transactions during the reconciliation period. The bifurcated issue will be addressed in a separate one-day hearing to be conducted after the originally scheduled hearing. The Administrative Law Judges (ALJs) grant the joint request to bifurcate the limited issue discussed above. CenterPoint Energy shall inform the ALJs no later than January 22, 2003, of the agreed date for the one-day hearing. CenterPoint shall file testimony as soon as possible on this issue but no later than January 24, 2003. If the intervening parties want to prefile testimony on this issue, it will be due one week after CenterPoint files its testimony, and CenterPoint will have three working days to file rebuttal testimony after the intervening parties file their testimony.

ISSUED this 3rd day of January, 2003.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
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TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

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**ORDER NO. 15
REQUESTING INFORMATION FROM PARTIES AND
ANNOUNCING HEARING PROCEDURES**

By January 23, 2003, each party shall file its list of witnesses and provide a one-paragraph summary of each witness's testimony. The Intervenor and Commission Staff shall also identify the contested issues addressed by each witness and the name of the Texas Genco, LP and CenterPoint Energy Houston Electric, LLC (CenterPoint) witness who addresses this issue in CenterPoint's direct testimony. For rebuttal witnesses, CenterPoint shall identify the contested issues addressed by each witness and the name of the Intervenor or Staff witness who addresses this issue in the Intervenor and Staff direct testimony. CenterPoint shall also identify any issues that the parties have settled. Also by January 23, 2003, the parties shall identify the witnesses they intend to cross-examine and estimate the amount of time needed to cross-examine each witness. The ALJs currently have this case schedule to last nine working days (January 28-February 7, 2003). By January 23, 2003, parties shall indicate if they believe more time is needed for this case.¹

By January 24, 2003, CenterPoint shall inform the ALJs if it believes this case can be divided into phases for purposes of the hearing.² CenterPoint shall also file a list of all contested issues and, if possible, group the issues by phase and identify all CenterPoint, Intervenor, and Staff witnesses who address each issue.

The hearing in the above-referenced case begins at 9:00 a.m., Tuesday, January 28, 2003. The ALJs will conduct the course, conduct, and scope of the hearing in accordance with the following hearing procedures and guidelines.

¹ If a party believes that the hearing will last fewer than nine days, then that party shall indicate the number of days it believes the hearing will last.

² CenterPoint shall discuss this issue with the other active parties before determining if this case can be divided into phases.

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GENERAL HEARING PROCEDURES AND GUIDELINES

HEARING SCHEDULE

9:00-5:00 with one morning and one afternoon break and a one hour and 15 minute lunch break

ORDER OF PRESENTATION OF DIRECT CASES

- CenterPoint
- City of Houston
- Texas Industrial Energy Consumers
- Office of Public Utility Counsel
- Commission Staff

Rules for Examining Witnesses

- **Issue Identification**: When a party calls a witness on direct and rebuttal, the party shall refer to its January 23, 2003 contested issues list, and identify for the record all of the issues on the contested issues list that the witness will address.
- **Protected Material**: Parties shall develop cross-examination in a way that does not reveal protected material; the ALJs will be reluctant to close the hearing.
- **Time Limits**: Parties shall follow the time limits in its estimate of time filed on January 23, 2003. The ALJs may further restrict the time limits for cross-examination as necessary.

ORDER OF CROSS-EXAMINATION

- CenterPoint
- City of Houston
- Texas Industrial Energy Consumers

- Office of Public Utility Counsel
- Commission Staff

(Rotates in accordance with direct case)

Parties who filed statements of position will be allowed to cross-examine³ and should file a list of all witnesses they intend to cross-examine with time estimates by January 23, 2003.

- The ALJs will follow the above order of presentation for cross-examination; a party not present in the hearing room at the start of its cross-examination rotation forfeits its opportunity to cross-examine that witness.

EXHIBITS

- Parties shall have all exhibits marked the day before the witness is called to testify.
- Any testimony stricken by the ALJs must be crossed out in the official copy and in the two appeal copies before proffer.
- There will be one non-confidential appeal box and one confidential appeal box; the parties shall bring two appeal copies to place in the appropriate boxes.

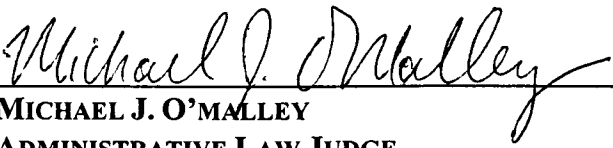
³ These parties will be added to the order of cross-examination after they file their lists of witnesses for cross-examination.

OBJECTIONS

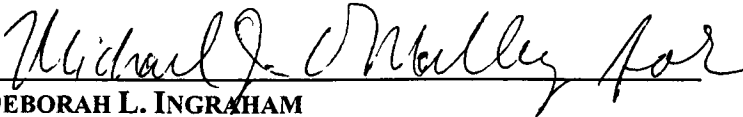
No speaking objections will be allowed. Objections to questions or answers must include the word "Objection" and succinctly state the evidentiary basis for the objection.

ISSUED this 14th day of January 2003.


STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE

JOINT APPLICATION OF TEXAS
GENCO, LP AND CENTERPOINT
ENERGY HOUSTON ELECTRIC, LLC
TO RECONCILE ELIGIBLE FUEL
REVENUES AND EXPENSES
PURSUANT TO SUBST. R. 25.236

§
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 17

GRANTING COMMISSION STAFF'S MOTION TO FILE REVISED
TESTIMONY OF JAY A. CURTIS

On January 16, 2003, Commission Staff moved to withdraw the prefiled testimony of its witness, Jay A. Curtis, filed January 7, 2003, and replace it with Mr. Curtis' revised direct testimony. CenterPoint does not oppose the motion. The Intervenors also do not oppose the withdrawal and revision of Mr. Curtis' testimony provided they retain all rights of cross-examination.

The Administrative Law Judges grant the motion, withdraw the prefiled testimony of Jay A. Curtis, and accept Mr. Curtis' revised prefiled testimony. The Intervenors retain all rights to cross-examine Mr. Curtis on his revised testimony.

ISSUED this 17th day of January, 2003.


MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE


DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE


CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE

JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 16

GRANTING MOTION TO DEFER PRESENT PROCEDURAL DATES

On January 17, 2003, Texas Genco, LP and CenterPoint Energy Houston Electric, LLC (CenterPoint) filed a Motion to Defer Present Procedural Dates. CenterPoint has discussed this motion with the other parties to this proceeding, and all parties are in agreement with the motion and the one-week extension of the deadlines. Because the parties need additional time to discuss settlement of this case, the Administrative Law Judges grant the Motion to Defer Present Procedural Dates. The new deadlines are as follows:

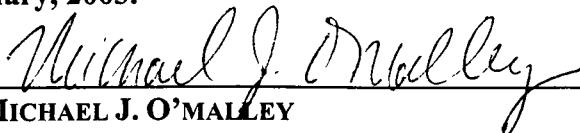
Deadline for TIEC filing on the ETRM data base issue	January 24, 2003
Deadline for rebuttal testimony	January 28, 2003
One-week extension on the deadlines regarding the bifurcation issue in Order No. 13	
Deadline for list of witnesses with testimony summary	January 30, 2003
Deadline to identify witnesses for cross with time estimates	January 30, 2003
Deadline for parties to estimate length of hearing	January 30, 2003
Deadline for phased hearing recommendation	January 31, 2003
Deadline to list contested issues by phase and witness	January 31, 2003

The hearing on the merits currently scheduled for 9:00 a.m., Tuesday, January 28, 2003, will be rescheduled to begin at 9:00 a.m., Tuesday, February 4, 2003, in a SOAH hearing room on the


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4th floor of the William P. Clements Building, 300 W. 15th Street, Austin, Texas, and will continue from day to day until concluded.

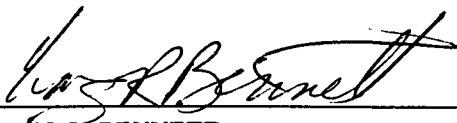
ISSUED this 17th day of January, 2003.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE


JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	OF
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 18

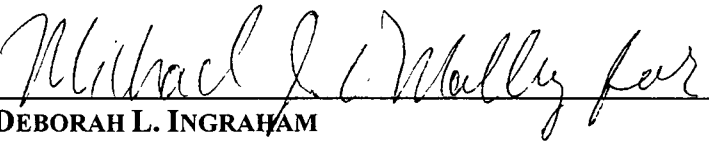
RESPONDING TO REQUEST FOR CLARIFICATION OF ORDER NO. 15

On January 24, 2003, Texas Genco, LP and CenterPoint Energy Houston Electric, LLC (CenterPoint) filed a Request for Clarification of Order No. 15. In Order No. 15, the Administrative Law Judges (ALJs) informed the parties of the order of cross-examination. CenterPoint seeks to clarify whether it will be allowed to cross-examine Intervenor and Staff witnesses last. If CenterPoint prefers to cross-examine Intervenor and Staff witnesses last and no other party has any objection, then the ALJs will allow CenterPoint to cross-examine Intervenor and Staff witnesses last.

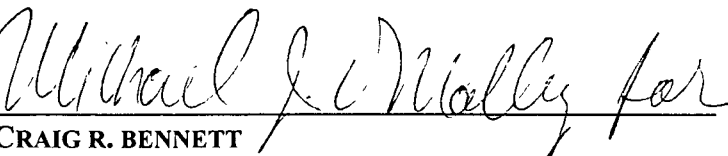
ISSUED this 27th day of January, 2003.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE



JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	OF PUBLIC UTILITY COUNSEL
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 19
DEFERRING PRESENT PROCEDURAL DEADLINES

On January 28, 2003, Texas Genco, LP and CenterPoint Energy Houston Electric, LLC (CenterPoint) filed a Motion to Defer Present Procedural Dates. CenterPoint has discussed this motion with the other parties to this proceeding, and all parties are in agreement with the motion.¹ Because the parties need additional time to discuss settlement of this case, the Administrative Law Judges grant the deferral of the procedural deadlines. The new deadlines are as follows:

Deadline for rebuttal testimony	January 30, 2003
Two-day extension on the deadlines regarding the bifurcation issue in Order No. 13	
Deadline for list of witnesses with testimony summary	February 3, 2003
Deadline to identify witnesses for cross with time estimates	February 3, 2003
Deadline for parties to estimate length of hearing	February 3, 2003
Deadline for phased hearing recommendation	February 4, 2003
Deadline to list contested issues by phase and witness	February 4, 2003
Deadline for objections to rebuttal testimony	February 4, 2003
Deadline for CenterPoint's Testimony on ERCOT resettlement	February 4, 2003


In addition to the deadlines referenced above, CenterPoint shall file status reports on the progress of settlement on February 3 and 4, 2003.

The hearing on the merits currently scheduled for 9:00 a.m., Tuesday, February 4, 2003, will be rescheduled to begin at 9:00 a.m., Thursday, February 6, 2003, in a SOAH hearing room on the

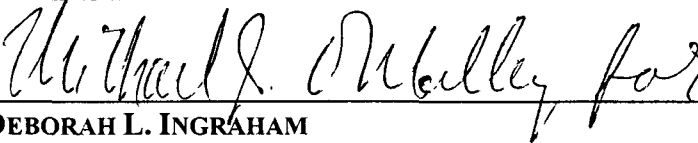
¹ The Office of Public Utility Counsel does not oppose the deferral.

4th floor of the William P. Clements Building, 300 W. 15th Street, Austin, Texas, and will continue from day to day until concluded.

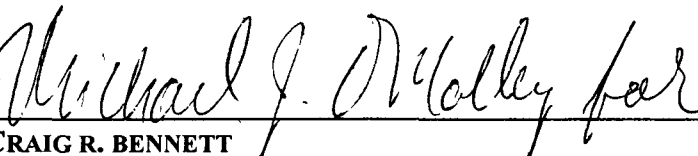
ISSUED this 28th day of January, 2003.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE

JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	OF PUBLIC UTILITY COUNSEL
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

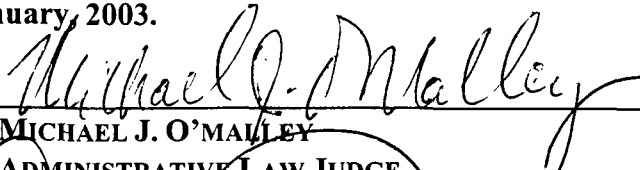
ORDER NO. 20
ABATING PRESENT PROCEDURAL DEADLINES AND
CANCELING HEARING ON THE MERITS

On January 29, 2003, Texas Genco, LP and CenterPoint Energy Houston Electric, LLC (CenterPoint) filed a motion to abate present procedural deadlines. CenterPoint indicates that the parties have reached an agreement in principle to settle this proceeding.¹ According to CenterPoint, if finalized and approved, the settlement will resolve most of the issues and defer all remaining issues for resolution at a later date. CenterPoint also states that the agreement is unanimous. The parties request that the procedural schedule be abated. Because the parties have reached a unanimous settlement in principle, which resolves or defers the issues in this proceeding, the Administrative Law Judges grant the abatement of the procedural deadlines. Accordingly, all procedural deadlines, including deadlines on the bifurcated ERCOT resettlement issues, discovery deadlines, deadlines on the imputed capacity issue, and all other deadlines referenced in Order No. 19, are abated. On Friday, February 14, 2003, the parties shall file a written settlement agreement or a status report.

¹ CenterPoint has been authorized to represent that the following parties support this motion: Commission Staff, Office of Public Utility Counsel, City of Houston, Texas Industrial Energy Consumers, Gulf Coast Coalition of Cities, and the Alliance for Retail Markets. No party to this proceeding opposes this motion.

The hearing on the merits scheduled for 9:00 a.m., Thursday, February 6, 2003, is canceled.

ISSUED this 29th day of January, 2003.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE



CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE

SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195

JOINT APPLICATION OF TEXAS § BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT §
ENERGY HOUSTON ELECTRIC, LLC § OF
TO RECONCILE ELIGIBLE FUEL §
REVENUES AND EXPENSES § ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236 §

ORDER NO. 21
REQUESTING INFORMATION


On March 3, 2003, CenterPoint Energy Houston Electric, LLC and Texas Genco, LP (CenterPoint), the Office of Public Utility Commission, City of Houston, Texas Industrial Energy Consumers, the Gulf Coast Coalition of Cities, the Alliance for Retail Markets, Occidental Chemical Corporation, and the Staff of the Public Utility Commission of Texas (collectively, Signatories) filed a Stipulation and Agreement (Stipulation). Under the Stipulation, the Signatories reserve certain issues to be resolved in hearing to be conducted on November 12, 2003 (Reserved Issues Hearing). In the Stipulation, CenterPoint never discusses why the Signatories determined to hold a hearing on the reserved issues more than eight months after the Stipulation has been filed. CenterPoint also does not explain why the Signatories determined that the settled issues had to be approved by the Public Utility Commission of Texas (Commission) at this time instead of at the time the reserved issues are decided. In other words, could the settled issues be included in the proposal for decision that resolves the reserved issues under a separate section titled settled issues?

CenterPoint should also indicate if the Signatories anticipate that the reserved issues will be severed from the current docket numbers and be decided as part of separate docket numbers. Finally, the Stipulation indicates that the Signatories would like a decision on the reserved issues before the true-up proceeding begins. Depending on the schedule the Commission will set for the true-up proceeding, it seems unlikely that a final order on the reserved issues could be issued before the initiation of the true-up proceeding. If the Reserved Issues Hearing begins November 12, 2003, it is unlikely that a final order will be issued before March or April 2004. If the reserved issues are not finally resolved before the true-up proceeding has to be filed, would CenterPoint (and its affiliates) have the appropriate information to file a complete and sufficient true-up application? CenterPoint

shall respond to the Administrative Law Judge's questions and concerns no later than noon on Friday, March 7, 2003.

SIGNED AT AUSTIN, TEXAS the 5th day of March, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE

SOAH DOCKET NO. 473-02-3473

PUC DOCKET NO. 26195

JOINT APPLICATION OF TEXAS	§	BEFORE THE STATE OFFICE
GENCO, LP AND CENTERPOINT	§	
ENERGY HOUSTON ELECTRIC, LLC	§	OF
TO RECONCILE ELIGIBLE FUEL	§	
REVENUES AND EXPENSES	§	ADMINISTRATIVE HEARINGS
PURSUANT TO SUBST. R. 25.236	§	

ORDER NO. 22
RETURNING SETTLED CASE TO
THE PUBLIC UTILITY COMMISSION OF TEXAS
FOR APPROVAL ON AN INTERIM BASIS AND
ADMITTING EVIDENCE INTO THE RECORD

Returning Settled Case to the Public Utility Commission of Texas

On March 3, 2003, CenterPoint Energy Houston Electric, LLC and Texas Genco, LP (CenterPoint), the Office of Public Utility Commission, City of Houston, Texas Industrial Energy Consumers, the Gulf Coast Coalition of Cities, the Alliance for Retail Markets, Occidental Chemical Corporation, and the Staff of the Public Utility Commission of Texas (collectively, Signatories) filed a Stipulation and Agreement. The Signatories stipulate and agree that the Stipulation resolves all issues in this docket except the issues explicitly described and reserved under Article II of the Stipulation (Reserved Issues).¹ The Reserved Issues are not resolved by the Stipulation, but rather, by agreement of the Signatories, are to be addressed and resolved in a hearing pursuant to Article IV of the Stipulation (Reserved Issues Hearing). The Signatories agree that the Reserved Issues Hearing should begin on or about November 12, 2003.

Because the Signatories have reached a Stipulation that resolves all issues in this docket, except the issues explicitly described and reserved under Article II of the Stipulation, the Administrative Law Judge (ALJ) finds that this case can be processed administratively. The ALJ,

¹ Article II sets out the Reserved Issues and states that the Reserved Issues and the amounts associated with the Reserved Issues were not included in the Stipulated Fuel Balance described in Article I of the Stipulation. The Stipulation is attached to this Order.

therefore, returns this case to the Commission for consideration of the Stipulation and Proposed Order.²

On March 5, 2003, the ALJ issued Order No. 21, requiring CenterPoint to respond to certain questions.³ Based on CenterPoint's response, it is appropriate to approve the Stipulation with the findings of fact and conclusions of law on an interim basis. Once an order is issued on the Reserved Issues, both the Stipulation and Reserved Issues findings of fact and conclusions of law can be combined in one final order. According to CenterPoint, the Signatories do not request a separate docket be created for the Reserved Issues. Because the Commission would approve the Stipulation and the associated findings of fact and conclusions of law on an interim basis, the ALJ would maintain the docket at the State Office of Administrative Hearings until the Reserved Issues are resolved in a final order.

Admitting Evidence into the Record

In support of the Proposed Order, the ALJ admits the following evidence into the record:

1. CenterPoint's Pre-Filed Direct Testimony and Schedules FR-1.1 through FR-22 and associated workpapers filed on July 1, 2002;
2. Errata to CenterPoint's direct case filed on October 2, 2002, November 8, 2002, and December 6, 2002;
3. the Supplemental Direct Testimony of Adrian Pieniazek filed on February 14, 2003; and
4. The Affidavits of Notice filed on July 19, 2002, and July 25, 2002.

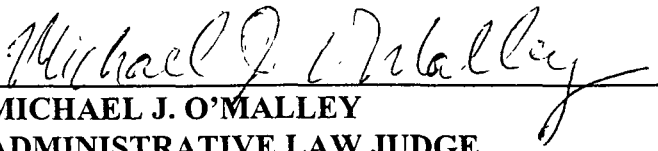
² In Order No. 8, the ALJ indefinitely extended the March 1, 2003 regulatory deadline.

³ The ALJ attaches CenterPoint's response to Order No. 21 to provide the Commission with further information on the Stipulation.

The parties waive cross-examination of such testimony, exhibits, and schedules.

SIGNED AT AUSTIN, TEXAS the 10th day of March, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE



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**SOAH DOCKET NO. 473-02-3473
PUC DOCKET NO. 26195**

APPLICATION OF TEXAS GENCO, LP	§	BEFORE THE STATE OFFICE
AND CENTERPOINT ENERGY	§	
HOUSTON ELECTRIC, LLC, TO	§	
RECONCILE ELIGIBLE FUEL	§	OF
REVENUES AND EXPENSES	§	
PURSUANT TO SUBST. R. 25.236	§	ADMINISTRATIVE HEARINGS

STIPULATION AND AGREEMENT

This Stipulation and Agreement (“Stipulation”) is made and entered into by and among the parties to Public Utility Commission of Texas (“Commission”) Docket No. 26195: CenterPoint Energy Houston Electric, LLC (“CenterPoint Energy”), Texas Genco, LP (“Texas Genco”) (CenterPoint Energy and Texas Genco are collectively referred to as the “Companies”), the Office of Public Utility Counsel (“OPC”), City of Houston, Texas (“City of Houston”), Texas Industrial Energy Consumers (“TIEC”), the Gulf Coast Coalition of Cities,¹ the Alliance for Retail Markets, Occidental Chemical Corporation and the Staff of the Public Utility Commission of Texas (hereinafter referred to individually as a “Signatory” and jointly as “Signatories”).

WHEREAS, On July 1, 2002 Reliant Energy, Incorporated filed its *Petition of Reliant Energy, Incorporated to Reconcile Eligible Fuel Revenues and Expenses Pursuant to Subst. R. 25.236* (the “Filing Package”) with a total under-recovery fuel balance of \$144,339,069;

WHEREAS, the Commission established Docket No. 26195 to address the issues raised by the Filing Package and, on July 2, 2002, referred this matter to the State Office of Administrative Hearings;

WHEREAS, after the initiation of this proceeding, Reliant Energy, Incorporated was converted into CenterPoint Energy Houston Electric, LLC, Texas Genco LP became a separate

¹ The Gulf Coast Coalition of Cities represents the City of Lake Jackson, City of Friendswood, City of Missouri City, City of La Marque, City of League City, City of Dickenson, and City of Alvin each of which independently filed a motion to intervene in this proceeding.

company pursuant to Reliant Energy, Incorporated's Business Separation Plan approved in Docket 21956, and the caption of this docket was changed to substitute CenterPoint Energy and Texas Genco for Reliant Energy, Incorporated;

WHEREAS, OPC, City of Houston, TIEC, the various cities that comprise the Gulf Coast Coalition of Cities, Occidental Chemical Corporation and the Alliance for Retail Markets moved for and were granted intervention in this docket;

WHEREAS, pursuant to errata filings made by the Companies on October 2, 2002, November 8, 2002 and December 6, 2002 the proposed under recovery balance was reduced to \$136,075,187, including interest through September 30, 2002;

WHEREAS, pursuant to procedures adopted by the Administrative Law Judges, certain of the Signatories conducted extensive discovery regarding the Filing Package and subsequent errata filings;

WHEREAS, various intervenors and the Commission Staff filed testimony contesting various elements of the proposed under recovery balance; and

WHEREAS, the Signatories desire to resolve the issues in this proceeding through compromise and settlement;

NOW THEREFORE, the Signatories, through their undersigned representatives, agree to and recommend for approval by the Administrative Law Judge and the Commission as a means of resolving the issues in this proceeding the following provisions of this Stipulation:

ARTICLE I

The Signatories stipulate and agree that this Stipulation finally resolves all issues in this docket except the issues explicitly described and reserved under Article II ("Reserved Issues"). The Signatories stipulate and agree that, subject to adjustment under Articles II and III the final fuel balance to be carried forward to the stranded cost true-up pursuant to Sections 39.202 (c) and 39.262

of the Texas Utilities Code ("Stranded Cost True-Up") shall be (i) an over recovery balance of \$135,078,676, which includes accrued interest through December 31, 2002 ("Stipulated Fuel Balance"), adjusted for any increase or decrease to the December 31, 2002 balance resulting from resolution of the Reserved Issues (including interest through December 31, 2002), with (ii) interest from December 31, 2002 to the date of the final order in the Stranded Cost True-Up proceeding ("the Interest Accumulation Period") using the Commission interest rate(s) in effect during the Interest Accumulation Period determined pursuant to PUC Substantive Rule 25.263(h)(4). Except for such adjustments as may be required as a result of resolution of the Reserved Issues and the continuing accrual of interest, no adjustments shall be proposed or made to the Stipulated Fuel Balance set out above.

ARTICLE II

A. The Reserved Issues are not resolved by this Stipulation, but rather, by agreement of the Signatories are to be addressed and resolved in a hearing pursuant to Article IV ("Reserved Issue Hearing"). The Reserved Issues are:

Deferred Kerr-McGee Costs ²	\$ 46,226,693
Sharing of JOA Benefits ³	\$101,374,900
Interest on the JOA Benefit ⁴	\$ 21,968,979
Imputed Capacity for Purchased Power ⁵	\$ 24,005,797
Interest on Imputed Capacity ⁶	\$ 6,182,276
ERCOT OOMC Charges ⁷	\$ 2,209,333
Interest on OOMC ⁸	\$ 590,667
Total	\$202,558,645

The \$202,558,645 attributable to the Reserved Issues was not included in the Stipulated Fuel Balance as of December 31, 2002 set out in Article I. The Signatories agree that these issues shall be resolved through the Reserved Issue Hearing. If, upon final resolution of any Reserved Issue other than Imputed Capacity, it is determined that all, or any portion of the amount (whether principal, interest or both), was properly includable in eligible fuel expense for this final fuel reconciliation, eligible fuel expense shall be increased and as a result the Stipulated Fuel Balance shall be reduced retroactive to December 31, 2002 by the amount so determined to be properly includable in eligible fuel expense. Interest shall accrue on each such amount beginning January 1, 2003. If upon final resolution of the imputed capacity cost issue it is determined that less than \$24,005,797 should have been excluded

² The Deferred Kerr-McGee Cost issues reserved under Article II are solely the Kerr-McGee related issues raised in the Prepared Direct Testimony of City of Houston Witness Daniel, OPC Witness Falkenberg, TIEC Witness Pollock and the Revised Direct Testimony of PUC Staff Witness Curtis relating to the regulatory treatment to be accorded the \$46,226,693 of Kerr-McGee coal costs, which pursuant to the stipulation and agreement in Docket 18753 were deferred.

³ The JOA Benefits issues reserved under Article II are solely the issues relating to the Joint Operating Agreement between CenterPoint Energy and the City Public Service Board of San Antonio which were raised in the Prepared Testimony of City of Houston Witness Scott Norwood.

⁴ Interest reflects accrued interest through December 31, 2002.

⁵ The Imputed Capacity issues reserved under Article II are solely the issues regarding the imputation of capacity costs for energy only purchases and the regulatory treatment of such imputed capacity costs as raised in the Prepared Testimony of OPC Witness Falkenberg and TIEC Witness Pollock. The amounts at issue for imputed capacity are the specific amounts listed in the testimony of Messrs. Falkenberg and Pollock, plus such additional amounts as may be identified in any supplemental testimony on imputed capacity as may be permitted as a result of action on TIEC's response to Order No. 14.

⁶ Interest reflects accrued interest through December 31, 2002 on the \$24,005,797 disallowance proposed in the Direct Testimony of OPC Witness Falkenberg and relates to the specific transactions listed in the workpapers to that testimony. Interest, if any, associated with any addition or reduction to the Imputed Capacity amounts excluded from reconcilable fuel will be calculated based on the date the allowed or disallowed costs were incurred.

⁷ The ERCOT OOMC Charge issues reserved under Article II are solely the issue regarding payments CenterPoint Energy made to ERCOT under Section 5.6.8 of the ERCOT Protocols for "Out-of-Merit Capacity" as raised in the Direct Testimony of PUC Staff Witness Whitmer; City of Houston Witness Neely, and OPC Witnesses Efron and Falkenberg.

⁸ Interest reflects accrued interest through December 31, 2002.

from eligible fuel expense for the fuel reconciliation period, the eligible fuel expense shall be increased and as a result the Stipulated Fuel Balance shall be reduced by the sum of (i) the portion of the \$24,005,797 which should have been included in eligible fuel expense and (ii) interest on the included amount calculated from the date the additional excluded costs were incurred during the fuel reconciliation period. If upon final resolution of the imputed capacity cost issue it is determined that more than \$24,005,797 should have been excluded from eligible fuel expense for the fuel reconciliation period, eligible fuel expense shall be reduced and as a result the Stipulated Fuel Balance shall be increased by the sum of (i) the amount by which the excluded costs exceed \$24,005,797 and (ii) interest on the excluded amount calculated from the date the additional excluded costs were incurred during the fuel reconciliation period.

B. Nothing in this Stipulation shall be construed to prejudice any right of Companies to seek, or of any Signatory to oppose, recovery through the Stranded Cost True-up proceeding of any costs associated with Reserved Issues which are determined not to be an eligible fuel expense for the fuel reconciliation period. The inclusion of this provision in the Stipulation shall not be construed to represent the agreement of any Signatory that any such costs may be recovered through the Stranded Cost True-up proceeding.

ARTICLE III

The stipulated over recovery balance set out in Article I results in part from the inclusion of \$4,000,000 attributable to a credit of \$8,266,780 CenterPoint Energy received from ERCOT as a result of load related adjustments under ERCOT's most recent resettlement of January 2002. It is also attributable in part to \$402,793 of credits related to ERCOT charges for balancing energy neutrality adjustments, ERCOT administrative fees, OOM replacement capacity charges and OOM energy charges CenterPoint Energy received from ERCOT as a result of ERCOT's most recent