



Control Number: 31544



Item Number: 1

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DOCKET NO. 31544

APPLICATION OF ENTERGY  
GULF STATES, INC. FOR  
RECOVERY OF TRANSITION TO  
COMPETITION COSTS

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PUBLIC UTILITY COMMISSION  
OF TEXAS

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APPLICATION OF ENTERGY GULF STATES, INC. FOR RECOVERY OF  
TRANSITION TO COMPETITION COSTS, FOR APPROVAL OF A TRANSITION  
TO COMPETITION COST RECOVERY RIDER, AND MOTION REQUESTING  
AUTHORITY TO FILE AND SERVE WORKPAPERS AND VOLUMINOUS  
DOCUMENTS ON ELECTRONIC MEDIA

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

Pursuant to House Bill 1567, 79<sup>th</sup> Regular Session, Entergy Gulf States, Inc. ("EGSI" or the "Company") files this application for recovery of its Transition to Competition ("TTC") costs incurred from June 1, 1999 through June 17, 2005, plus carrying costs. This application also requests approval of a TTC retail rate rider mechanism ("Rider TTC") through which the TTC costs will be recovered over a 15-year period, which EGSI proposes will commence no later than March 1, 2006. A copy of the proposed Rider TTC is included at Attachment A to this application. Prepared direct testimony, exhibits, and workpapers supporting this application are also included with this filing. In support of this application, EGSI shows as follows:

The business address of the Company is:

Entergy Gulf States, Inc.  
350 Pine Street  
Beaumont, Jefferson County, Texas 77701.

The business mailing address of the Company is:

Entergy Gulf States, Inc.  
P.O. Box 2951  
Beaumont, Texas 77704.

The business telephone number of the Company, including area code, is  
(409) 838-6631.

I. AUTHORIZED REPRESENTATIVES

The authorized representatives for the Company in this proceeding are:

Jack Blakley  
Vice President – Regulatory Affairs, Texas  
Entergy Gulf States, Inc.  
Suite 840  
919 Congress  
Austin, Texas 78701  
512-487-3975  
(FAX) 512-487-3998

Steve Neinast  
Senior Attorney  
Entergy Services, Inc.  
Suite 701  
919 Congress  
Austin, Texas 78701  
512-487-3957  
(FAX) 512-487-3958

Inquiries and pleadings concerning this Application should be directed to  
the following representative:

Steve Neinast  
Senior Attorney  
Entergy Services, Inc.  
Suite 701  
919 Congress  
Austin, Texas 78701  
512-487-3957  
(FAX) 512-487-3958

## **II. JURISDICTION AND AFFECTED PARTIES**

The Public Utility Commission of Texas ("Commission" or "PUCT") has jurisdiction over EGSi and the subject matter of this petition by virtue of Section 32.001 of the Public Utility Regulatory Act<sup>1</sup> ("PURA") and HB 1567. This application is also being filed pursuant to P.U.C. Proc. R. 22.33 and P.U.C. SUBST. R. 25.241.

The parties, classes of customers, and territories that would be affected by approval of this application are all customers who currently take, or will take during the next 15 and one-half years, electric service from EGSi in EGSi's Texas service territory.

## **III. TTC COST RECOVERY, CASE PRESENTATION, AND RIDER TTC**

HB 1567, to be codified in new Subchapter J, Chapter 39, of PURA, provides that EGSi is entitled to recover, through a rate rider mechanism: "all reasonable and necessary expenditures made or incurred before the effective date of this section to comply with this chapter, to the extent the costs have not otherwise been recovered." See HB 1567, Section 39.454, a copy of which is included at Attachment B to this application. In this application and the attached supporting testimony, EGSi refers to the expenditures subject to Section 39.454 as transition to competition, or "TTC," costs.

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<sup>1</sup> TEX. UTIL. CODE ANN. Title 2.

**A.     The TTC Cost Period and TTC Costs**

The period over which these TTC costs were made or incurred is from June 1, 1999 through June 17, 2005, plus carrying costs. This period is referred to as the "TTC cost period." The costs incurred during the TTC cost period, including attendant Allowance for Funds Used During Construction ("AFUDC") through June 17, 2005, but exclusive of carrying costs, are \$164,240,108.98. If Rider TTC becomes effective on March 1, 2006 (discussed below), the TTC cost figure is anticipated to be \$189,377,615 as of February 28, 2006, exclusive of the gross-up for income taxes on the equity component of AFUDC and the equity component of the carrying charges, and exclusive of carrying costs during the subsequent 15-year cost recovery period.<sup>2</sup>

The TTC cost period is derived from Section 39.454, which states that EGSi is entitled to recover "all reasonable and necessary expenditures made or incurred before the effective date of this section to comply with this chapter, to the extent the costs have not otherwise been recovered." The "chapter" referred to in the foregoing quotation is Chapter 39 of PURA, which is the Chapter in which Section 39.454 will be codified. The "effective date of this section" referred to in the foregoing quotation is June 18, 2005, which is the date on which HB 1567, which includes Section 39.454, was signed by Governor Perry. Accordingly, the end of the TTC cost period is the day before the legislation

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<sup>2</sup> The income tax gross-up on the equity component of the AFUDC accrued on the capital costs and on the equity component of the carrying charges over the course of the 15-year cost recovery period is approximately \$15.7 million. For illustrative purposes, adding this income tax gross-up figure to the \$189.3 million TTC costs as on February 28, 2006 results in a TTC cost of approximately \$205.0 million, exclusive of the carrying costs over the 15-year cost recovery period.

became effective—June 17, 2005. The start date for the TTC cost period is June 1, 1999 because that day is the first day of the month following the month in which both chambers of the Texas Legislature voted to approve Senate Bill 7 (May 29, 1999), which established PURA Chapter 39. June 1, 1999 sets the date from which EGSI began to prepare for ROA, and thus began to incur TTC costs.

**B. Support for EGSI's TTC Costs**

Fourteen witnesses support this application through pre-filed direct testimony, exhibits, and workpapers included with this filing. These witnesses show that the requested TTC costs were incurred prior to June 18, 2005 to comply with PURA Chapter 39, and establish that these TTC costs are reasonable and necessary. Testimony is also presented to show that these TTC costs have not otherwise been recovered and, in accordance with Section 39.454, to apply carrying costs to the \$164.2 million in TTC costs.

In accordance with Section 39.454, this application is not a rate proceeding brought under Chapter 36 of PURA. For ease of presentation and clarity, however, the Company presents its TTC costs, in part, under a traditional rate case approach. The Company has segregated its TTC costs, exclusive of carrying costs, into 14 “classes,” which is similar to what would be done in the affiliate portion of a traditional Chapter 36 rate proceeding that involves both affiliate and non-affiliate costs. In this filing, however, the classes are based on the type of work performed, rather than on whether the cost is an “affiliate” or a

“non-affiliate” cost. An “affiliate” cost is a cost that was charged to EGSi from an affiliate; a “non-affiliate” cost is a cost that was incurred directly by EGSi.

Of these 14 classes that make up the TTC costs, one class (the “Energy Efficiency Programs” class) is comprised solely of non-affiliate costs. The other 13 classes include at least some affiliate costs. For example, the “Pilot Implementation” class is comprised of costs that were incurred to plan, develop, and implement the Retail Choice Pilot Project for EGSi’s Texas service territory. This class includes both affiliate and non-affiliate costs. The witness who sponsors the Pilot Implementation class demonstrates that the costs in this class, regardless of whether affiliate or non-affiliate, are reasonable and necessary. To do so, this witness (and all witnesses who sponsor cost classes that include both affiliate and non-affiliate costs, or include exclusively affiliate costs) applies the “affiliate” proof standard contained in PURA § 36.058.

By presenting its case in this manner, the Company is not suggesting or implying that the PURA § 36.058 affiliate proof standard applies to non-affiliate costs. The purpose of this presentation approach is to simplify a complex presentation to the extent possible, and to ensure that all TTC costs are shown to be reasonable and necessary.

### C. Rider TTC

Rider TTC is the rate rider mechanism through which EGSi proposes to recover its TTC costs. As is authorized by Section 39.454, Rider TTC is designed to recover the TTC costs over a 15-year period. EGSi proposes that

Rider TTC would become effective no later than March 1, 2006, and remain in effect for 15 years from that date.

**D. Summary of Presentation**

In summary, EGSi will show the following with regard to the requested TTC costs:

- The TTC costs are all reasonable and necessary expenditures;
- These expenditures were made or incurred before the effective date of HB 1567;
- These expenditures were made or incurred to comply with Chapter 39 of PURA;
- The TTC costs have not otherwise been recovered;
- The details of the amounts spent or incurred;
- The 15-year term of the TTC Rider; and
- Appropriate carrying costs applied to the TTC costs.

**IV. NOTICE**

HB 1567, Section 39.454 explicitly states that “a rate proceeding under Chapter 36 is not required to implement the [TTC] rider.” Therefore, the notice requirements specified in P.U.C. PROC. R. 22.51, which apply to Chapter 36 proceedings, should not apply to this docket. Rather, P.U.C. PROC. R. 22.55 should apply in this docket, and that rule provides that the Presiding Officer may require a party to provide reasonable notice to affected persons. EGSi proposes the following with regard to public notice of this matter:



1. the Company proposes to publish notice of this application by one-time publication in newspapers having general circulation in each county of the Company's Texas retail service area beginning as soon as practicable after filing this Application.
2. Additionally, the Company will serve a copy of this filing on all active parties who intervened in the Company's last general base rate filing before the Commission: Docket No. 30123, *Application of Entergy Gulf States, Inc. for Authority to Change Rates and Reconcile Fuel Costs*.
3. The form of the notice to be provided is included in Attachment C to this application. The Company requests that the Commission find that the Company's notice is sufficient.

V. CONFIDENTIAL INFORMATION AND PROTECTIVE ORDER

Certain of the exhibits and workpapers that are attached to EGSi's testimony in this application, and information that may be provided through the course of this proceeding, contain or may contain confidential or highly sensitive information. To facilitate evaluation of this information by the Commission Staff and other parties in this proceeding, the Company has prepared a Protective Order that is included in Attachment D. The proposed Protective Order duplicates the standard protective order adopted by the Commission in Project No. 21662.<sup>3</sup> EGSi requests that the Protective Order be adopted for use in this proceeding.

Attachment E to this application presents a complete listing of the

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<sup>3</sup> *Development of a Standard Protective Order for Use in Senate Bill 7 Transition Cases* (Jan. 16, 2000).

information that the Company deems to be confidential or highly sensitive accompanied by the affidavit supporting the Company's claims of confidentiality. Pending issuance of a Protective Order in this case, the confidential or highly sensitive information will be made available at the Company's offices, 919 Congress Avenue, Suite 840, Austin, Texas 78701, telephone number (512) 487-3999, during normal business hours to parties who execute a confidentiality disclosure agreement.

VI. MOTION FOR AUTHORITY TO FILE VOLUMINOUS EXHIBITS  
AND ALL WORKPAPERS ON CDs

EGSI requests waiver of the provisions in P.U.C. PROC. R. 22.72(b), (c), and (g) that require that all documents be filed in a paper format. Specifically, EGSI moves for authority to file and serve its voluminous exhibits and all of its supporting workpapers solely on Compact Disks, rather than on paper (as well as electronic filing). Voluminous exhibits are those that exceed 249 pages in length. EGSI is filing and serving this application and attachments, its testimony, and all non-voluminous exhibits in a paper format, as well as electronically.

EGSI moves for authority to file its voluminous exhibits and workpapers solely on CDs because of the volume of those documents. Certain of the exhibits, primarily in the form of benchmarking studies, are well over 249 pages in length. Similarly, workpapers in the form of invoices and timesheets, in particular, are many thousands of pages in length. EGSI is requesting authority to provide workpapers only on CD, regardless of length, so that all workpapers can be contained on accessible electronic media. Therefore, to facilitate filing, service, and review of these documents, and given the volume of some exhibits

and many of the workpapers, EGSi requests authority to file voluminous exhibits and all workpapers only on CD. To the extent parties wish to review paper copies of voluminous documents, the Company is prepared to discuss in a prehearing conference with interested parties, the establishment of a data room in EGSi's Austin offices that will include a paper copy of the entire filing.

**VII. CONCLUSION AND RELIEF REQUESTED**

Through this application, Entergy Gulf States, Inc. requests:

1. that notice of this filing be considered sufficient and authorized as provided in Section IV. above;
2. that the Commission approve Rider TTC and rates to be effective no later than March 1, 2006;
3. that the Protective Order provided in Attachment D be adopted for use in this docket;
4. that the motion for waiver of paper filing requirements requested in Section VI be approved; and
5. such other relief to which it has shown itself entitled.

Respectfully submitted,

Steven H. Neinast  
ENTERGY SERVICES, INC.  
919 Congress Avenue  
Suite 701  
Austin, Texas 78701  
(512) 487-3957 telephone  
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By: Steven H. Neinast  
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ATTORNEYS FOR  
ENTERGY GULF STATES, INC.

#### CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all active parties of record in Docket No. 30123 on or about August 24, 2005, by hand-delivery, first class mail, or overnight delivery.

Steven H. Neinast  
Steven H. Neinast *lh*

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## SECTION III RATE SCHEDULES

### ENTERGY GULF STATES, INC.

Electric Service  
Texas

#### SCHEDULE TTC

Sheet No.: 65

Effective Date: Proposed

Revision: 0

Supersedes: New Schedule

Schedule Consists of: One Sheet

## TRANSITION TO COMPETITION RIDER

### I. APPLICATION

This Transition To Competition Rider ("Rider TTC" or the "Rider") is applicable under the regular terms and conditions of Entergy Gulf States, Inc. ("Company") to all electric service billed under all of the Company's Rate schedules and all associated Riders except Rate Schedules EAPS and SMS, whether for metered or unmetered service, and subject to the jurisdiction of the Public Utility Commission of Texas ("PUCT").

### II. GENERAL PROVISIONS

The Rate below is to recover the costs incurred by the Company resulting from the transition to retail open access. The Company shall monitor the amounts collected pursuant to this Rider to insure that the total transition costs recovered from ratepayers and retained by the Company shall not exceed the total amount approved for recovery by the PUCT. If the approved transition cost amount is recovered prior to the end of the Recovery Period, the Company shall cease billing under the Rider.

### III. RATE

All electric service accounts billed in accordance with Company's complete group of Rate Schedules and all associated Riders except Rate Schedules EAPS and SMS will also be billed the following amount during the Recovery Period:

<u>Rate Class</u>	<u>Rate Schedule</u>	<u>Rate Adjustment</u>
Residential	RS, RS-TOD	\$0.001939/kWh
Small General Service	SGS, UMS, TSS	\$0.001893/kWh
General Service	GS, GS-TOD, GS-SSTS	\$0.001703/kWh
Large General Service	LGS, LGS-TOD, LGS-SSTS, LGS-WHS	\$0.001483/kWh
Large Industrial Power Service	LIPS, LIPS-TOD, LIPS_SSTS	\$0.7819/kW
Interruptible Service	IS	\$0.3731/kW
Lighting	SHL, LS-E, ALS, RLU, PLS	\$0.001347/kWh

Amounts billed pursuant to this Rider TTC are not subject to Rider IHE but are subject to State and local sales taxes.

### IV. RECOVERY PERIOD

Rider TTC will be billed beginning with the Effective Date of this Rider and will remain in effect until the approved transition cost amount has been recovered, but not longer than fifteen (15) years.

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1 AN ACT

2 relating to the transition to competition of certain electric  
3 utilities outside of ERCOT.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 39, Utilities Code, is amended by adding  
6 Subchapter J to read as follows:

7 SUBCHAPTER J. TRANSITION TO COMPETITION IN CERTAIN

8 NON-ERCOT AREAS

9 Sec. 39.451. APPLICABILITY. This subchapter applies only  
10 to an investor-owned electric utility that is operating solely  
11 outside of ERCOT in areas of this state that were included in the  
12 Southeastern Electric Reliability Council on January 1, 2005.

13 Sec. 39.452. REGULATION OF UTILITY AND TRANSITION TO  
14 COMPETITION. (a) Until the date on which an electric utility  
15 subject to this subchapter is authorized by the commission to  
16 implement customer choice under Section 39.453, the rates of the  
17 electric utility shall be regulated under traditional  
18 cost-of-service regulation and the electric utility is subject to  
19 all applicable regulatory authority prescribed by this subtitle and  
20 Subtitle A, including Chapters 14, 32, 33, 36, and 37.

21 (b) Notwithstanding Subsection (a), except for adjustments  
22 authorized by Sections 36.203, 39.454, 39.455, and 39.456, a person  
23 may not file a proceeding to change, alter, or revoke any rate  
24 offered or charged by an electric utility subject to this



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1 subchapter before June 30, 2007, with an effective date no earlier  
2 than June 30, 2008. As part of a Subchapter C, Chapter 36, rate  
3 proceeding, the utility shall propose a competitive generation  
4 tariff to allow eligible customers the ability to contract for  
5 competitive generation. The commission shall approve, reject, or  
6 modify the proposed tariff. The tariffs subject to this subsection  
7 may not be considered to offer a discounted rate or rates under  
8 Section 36.007, and the utility's rates shall be set, in the  
9 proceeding in which the tariff is adopted, to recover any costs  
10 unrecovered as a result of the implementation of the tariff.

11 (c) That portion of any commission order issued before the  
12 effective date of this section requiring the electric utility to  
13 comply with a provision of this chapter is void.

14 (d) Until the date on which an electric utility subject to  
15 this subchapter implements customer choice:

16 (1) the provisions of this chapter do not apply to that  
17 electric utility, other than this subchapter, Sections 39.904 and  
18 39.905, and the provisions relating to the duty to obtain a permit  
19 from the Texas Commission on Environmental Quality for an electric  
20 generating facility and to reduce emissions from an electric  
21 generating facility; and

22 (2) the electric utility is not subject to a rate  
23 freeze and, subject to the limitation provided by Subsection (b),  
24 may file for rate changes under Chapter 36 and for approval of one  
25 or more of the rate rider mechanisms authorized by Sections 39.454  
26 and 39.455.

27 (e) An electric utility subject to this subchapter may

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1 proceed with and complete jurisdictional separation to establish  
2 two vertically integrated utilities, one of which is solely subject  
3 to the retail jurisdiction of the commission and one of which is  
4 solely subject to the retail jurisdiction of the Louisiana Public  
5 Service Commission.

6 (f) Not later than January 1, 2006, an electric utility  
7 subject to this subchapter shall file a plan with the commission for  
8 identifying the applicable power region or power regions,  
9 enumerating the steps to achieve the certification of a power  
10 region in accordance with Section 39.453, and specifying the  
11 schedule for achieving the certification of a power region. The  
12 utility may amend the plan as appropriate. The commission may, on  
13 its own motion or the motion of any affected person, initiate a  
14 proceeding to certify a qualified power region under Section 39.152  
15 when the conditions supporting such a proceeding exist.

16 (g) Not later than the earlier of January 1, 2007, or the  
17 90th day after the date the applicable power region is certified in  
18 accordance with Section 39.453, the electric utility shall file a  
19 transition to competition plan. The transition to competition plan  
20 must:

21 (1) identify how the electric utility intends to  
22 mitigate market power and to achieve full customer choice,  
23 including specific alternatives for constructing additional  
24 transmission facilities, auctioning rights to generation capacity,  
25 divesting generation capacity, or any other measure that is  
26 consistent with the public interest;

27 (2) include a provision to reinstate a customer choice

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1 pilot project and to establish a price to beat for residential  
2 customers and commercial customers having a peak load of 1,000  
3 kilowatts or less; and

4 (3) include any other additional information or  
5 provisions that the commission may require.

6 (h) The commission shall approve, modify, or reject a plan  
7 filed under Subsection (g) not later than the 180th day after the  
8 date the plan is filed unless a hearing is requested by any party to  
9 the proceeding. A modification to the plan by the commission may  
10 not be in conflict with the jurisdiction or orders of the Federal  
11 Energy Regulatory Commission or result in significant additional  
12 cost without allowing for timely recovery for that cost. If a  
13 hearing is requested, the 180-day deadline is extended one day for  
14 each day of the hearing. The transition to competition plan shall  
15 be updated or amended annually, subject to commission approval,  
16 until the initiation of customer choice by an electric utility  
17 subject to this subchapter. Consistent with its jurisdiction, the  
18 commission shall have the authority in approving or modifying the  
19 transition to competition plan to require the electric utility to  
20 take reasonable steps to facilitate the development of a wholesale  
21 generation market within the boundaries of the electric utility's  
22 service territory.

23 Sec. 39.453. CUSTOMER CHOICE AND RELEVANT MARKET AND  
24 RELATED MATTERS. (a) The commission may not authorize customer  
25 choice until the commission certifies the applicable power region  
26 as a qualifying power region under Section 39.152(a). Sections  
27 39.152(b)-(d) also apply to the electric utility and commission in

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1 determining whether to certify the applicable power region.

2 (b) The commission shall certify that the requirement of  
3 Section 39.152(a)(3) is met for an electric utility subject to this  
4 subchapter only if the commission finds that the total capacity  
5 owned and controlled by the electric utility and the utility's  
6 affiliates does not exceed 20 percent of the total installed  
7 generation capacity within the power region of that utility.

8 Sec. 39.454. RECOUPMENT OF TRANSITION TO COMPETITION COSTS.  
9 An electric utility subject to this subchapter is entitled to  
10 recover, as provided by this section, all reasonable and necessary  
11 expenditures made or incurred before the effective date of this  
12 section to comply with this chapter, to the extent the costs have  
13 not otherwise been recovered. The electric utility may file with  
14 the commission an application for recovery that gives details of  
15 the amounts spent or incurred. After notice and hearing, the  
16 commission shall review the amounts and, if the amounts are found to  
17 be reasonable and necessary and not otherwise previously recovered,  
18 approve a transition to competition retail rate rider mechanism for  
19 the recovery of the approved transition to competition costs. A  
20 rate proceeding under Chapter 36 is not required to implement the  
21 rider. A rate rider implemented to recover approved transition to  
22 competition costs shall provide for recovery of those costs over a  
23 period not to exceed 15 years, with appropriate carrying costs.

24 Sec. 39.455. RECOVERY OF INCREMENTAL CAPACITY COSTS. An  
25 electric utility subject to this subchapter is entitled to recover,  
26 through a rate rider mechanism, reasonable and necessary costs of  
27 incremental resources required to meet load requirements to the

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1 extent those costs result in the utility expending more for  
2 capacity costs under purchase power agreements than were included  
3 in the utility's last base rate case, adjusted for load growth. Any  
4 rider under this section shall be implemented after review and  
5 approval by the commission, after notice and opportunity for  
6 hearing. Following the initial implementation of the rider, an  
7 electric utility subject to this subchapter may request revisions  
8 semiannually, after notice and opportunity for hearing, on the  
9 dates provided in the commission's rules for filing petitions to  
10 revise the utility's fuel factor. In conjunction with the utility's  
11 fuel reconciliation proceedings, the commission shall reconcile  
12 the costs recovered under the rider and the actual incremental  
13 capacity costs eligible for recovery under this section. The rider  
14 shall expire on the introduction of customer choice or on the  
15 implementation of rates resulting from the filing of a Subchapter  
16 C, Chapter 36, rate proceeding. In no event may the amount  
17 recovered annually under the rider exceed five percent of the  
18 utility's annual base rate revenues.

19 Sec. 39.456. FRANCHISE AGREEMENTS. A municipality, with  
20 the agreement of an electric utility, may accelerate the expiration  
21 date of a franchise agreement that was in existence on September 1,  
22 1999. Any new franchise agreement must be approved by the governing  
23 body of the municipality. To the extent that a new franchise  
24 agreement would result in an increase in the payment of franchise  
25 fees to the municipality, and subject to the terms of the franchise  
26 agreement, either the electric utility or the municipality, without  
27 the need for a rate proceeding under Chapter 36, may file with the

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1 commission for approval of a rider for the electric utility's  
2 recovery of franchise payments resulting from the agreement, so  
3 long as such rider is collected only from customers of the electric  
4 utility that are located within the boundaries of the municipality.

5 Sec. 39.457. CONTRACTUAL RIGHTS. In the event that the  
6 electric utility subject to this subchapter either merges,  
7 consolidates, or otherwise becomes affiliated with another owner of  
8 electric generation, or completes the jurisdictional separation  
9 authorized by Section 39.452(e) and the resulting vertically  
10 integrated utility proposes to join a regional transmission  
11 organization, and either action adversely affects the rights or  
12 obligations of an electric cooperative under a wholesale generation  
13 or transmission agreement entered into before the effective date of  
14 this subchapter or otherwise adversely affects the electric  
15 cooperative's access to its existing generation resources under  
16 said agreements, then the utility shall submit a proposal agreeable  
17 to the cooperative and the utility for addressing such rights and  
18 obligations in the appropriate regulatory proceeding. Such  
19 proposal shall be consistent with applicable law regarding the  
20 rights and obligations of the electric cooperative and the utility  
21 under such existing generation or transmission agreements.

22 SECTION 2. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1567 was passed by the House on April 21, 2005, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1567 on May 26, 2005, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1567 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

On August 24, 2005, Entergy Gulf States, Inc. ("EGSI" or "Entergy Texas") filed with the Public Utility Commission of Texas ("Commission" or "PUCT") an Application for Recovery of Transition to Competition Costs pursuant to Section 39.454 of the Texas Utilities Code (adopted under HB 1567). This new law states that Entergy Texas is entitled to recover its reasonable and necessary costs incurred prior to June 18, 2005 to comply with PURA Chapter 39, to the extent the costs have not otherwise been recovered. Entergy Texas refers to these costs as transition to competition ("TTC") costs, and requests recovery of such costs over a 15-year period through Rider TTC to its electric tariff. EGSI has requested that Rider TTC and the corresponding rates become effective no later than March 1, 2006.

EGSI requests recovery of \$164,240,109 in TTC costs incurred over a six-year period from June 1, 1999 through June 17, 2005, inclusive of attendant Allowance for Funds Used During Construction through June 17, 2005, but exclusive of carrying costs applicable during and after the TTC cost period. Projecting this figure to February 28, 2006 (the day before a March 1, 2006 effective date), the requested TTC cost is \$189,377,615, exclusive of gross up for taxes and exclusive of carrying costs to be recovered over the 15-year cost recovery period.

EGSI's Application, if approved, will affect all retail customers in Entergy's Texas service territory. The rates charged under the Rider TTC will increase the Company's annual Texas retail revenues by \$25,135,621. Under EGSI's Application, a residential customer using 1000 kilowatt-hours of electricity per month would see a Rider TTC charge of \$1.94 per month, or a 2.1% increase, to a typical residential customer's bill.

Given the unique nature of this filing, Commission processing and review of EGSI's filing could involve discussions and decisions regarding past and future rate treatment, cost recovery methods, and other open matters involving EGSI before regulatory authorities or courts.



Persons with questions or who want more information about the Application may contact Entergy Texas at 350 Pine Street, Beaumont, Texas 77706, or call [1/800-368-3749 (select option 1, then press 0)] during normal business hours. A complete copy of the Application is available for inspection at the address listed above, and at EGSI's Austin office at: 919 Congress Avenue, Suite 801, Austin, Texas 78701, telephone number (512) 487-3999.

The Commission will review EGSI's, establish an intervention date for interested persons, and determine whether the Application should be approved. The Commission's proceeding to review the Application has been assigned Docket No. \_\_\_\_\_. Persons who wish to intervene in or comment upon these proceedings, or obtain further information, should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or, call the Commission's Office of Consumer Protection at (512) 936-7120 or (888)782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All communications should refer to Docket No. \_\_\_\_\_.

DOCKET NO. \_\_\_\_\_

APPLICATION OF ENTERGY GULF	§	BEFORE THE
STATES, INC. FOR RECOVERY	§	PUBLIC UTILITY COMMISSION
OF TRANSITION TO COMPETITION	§	OF TEXAS
COSTS	§	

**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 DOCKET NO. \_\_\_\_\_" 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 produced by the Staff of the Public Utility Commission of Texas (Commission Staff,) or the Commission's Policy Development Division (PDD) 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 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 DOCKET NO. \_\_\_\_\_" 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 Commission 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 Commission 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 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 Commission Staff, OPC, and the Office of the Attorney General (OAG) when the OAG is representing a party to the proceeding.

10. Procedures in Paragraphs 10-14 Apply to Commission 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 Commission 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 Commission 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 the Commission Staff, OPC (if OPC is a party), and the OAG (if the OAG is representing a party) 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 Commission 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 Commission 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 Commission 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, Commission 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 Commission Staff, OPC, and the OAG. Except as allowed by Paragraph 7, Commission 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 Commission 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 Commission Staff or OPC shall be used only for the purpose of the proceeding in DOCKET NO. \_\_\_\_\_. 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 Paragraph 9, 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.
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 Commission 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 ensure 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 Docket No. \_\_\_\_\_ 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 ten (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 \_\_\_\_\_ day of \_\_\_\_\_, 2005.**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

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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 Commission Staff or OPC shall be used only for the purpose of the proceeding in Docket No. \_\_\_\_\_. 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

DOCKET NO. \_\_\_\_\_

I request to view/copy the following documents:

<u>Document Requested</u>	<u># of Copies</u>	<u>Non-Confidential</u>	<u>Confidential and/or H.S.</u>

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Party Represented

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**Confidential (Protected Material)/ Highly Sensitive (Highly Sensitive Protected Material) Information**

The following is a list of exhibits that are included in this Application and considered by Entergy Gulf States, Inc. ("the Company") to be Confidential (Protected Material) or Highly Sensitive (Highly Sensitive Protected Material) information, and a list of the witnesses sponsoring the Confidential (Protected Material) or Highly Sensitive (Highly Sensitive Protected Material) information. The Company considers the information listed below to be commercial or financial information, personnel information, or customer-specific information that is exempted from disclosure under the Public Information Act. TEX. GOV'T CODE ANN. §§ 552.021 and 552.110 (Vernon 2004); and TEX UTIL. CODE ANN. § 32.101(c) (Vernon 2004).



<u>Exhibits</u>	<u>Classification</u>	<u>Sponsoring Witness</u>
Exhibits: TRM-15; TRM-16; TRM-20; and TRM-25	Confidential	Thomas R. Manasco
Exhibits RNF-5A through RNF-5N	Highly Sensitive	Richard N. Ferguson
Exhibits RNF-6A through RNF-6F	Highly Sensitive	Richard N. Ferguson
Exhibits RNF-7A and RNF-7B	Confidential	Richard N. Ferguson
Exhibits RNF-7C through RNF-7AC	Highly Sensitive	Richard N. Ferguson
Exhibits RNF-7AD and RNF-7AE	Confidential	Richard N. Ferguson
Exhibits RNF-7AF and RNF-7AG	Highly Sensitive	Richard N. Ferguson



Exhibits RNF-7AH through RNF-7AO	Confidential	Richard N. Ferguson
Exhibits RNF-7AP through RNF-7BB	Highly Sensitive	Richard N. Ferguson
Exhibits RNF-8A, RNF-8B, and RNF-8G	Confidential	Richard N. Ferguson
Exhibits RNF-8C through RNF 8F; and Exhibits RNF-8I through RNF-8L	Highly Sensitive	Richard N. Ferguson
Exhibits RNF-9A through RNF-9C; and Exhibits RNF-9E through 9I	Confidential	Richard N. Ferguson
Exhibit RNF-9D	Highly Sensitive	Richard N. Ferguson
Exhibit RNF-10	Highly Sensitive	Richard N. Ferguson
Exhibit RNF-12	Highly Sensitive	Richard N. Ferguson
Exhibit RNF-13	Highly Sensitive	Richard N. Ferguson
Exhibits RNF-16A through RNF-16C	Highly Sensitive	Richard N. Ferguson
Exhibit RNF-17	Highly Sensitive	Richard N. Ferguson
Exhibit RNF-18	Highly Sensitive	Richard N. Ferguson

Exhibit RNF-19	Highly Sensitive	Richard N. Ferguson

I certify that I have reviewed the documents listed above and state in good faith that the information is exempt from public disclosure under the Public Utility Regulatory Act and merits the applicable designation of Confidential (Protected) Materials or Highly Sensitive (Highly Sensitive Protected) Materials detailed in the Protective Order accompanying this Application.

  
Steven H. Neinast  


Date: 8/20/05