



Control Number: 34800



Item Number: 1855

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**SOAH DOCKET NO. 473-08-0334
P.U.C. DOCKET NO. 34800**

**APPLICATION OF ENTERGY GULF
STATES, INC. FOR AUTHORITY TO
CHANGE RATES AND TO RECONCILE
FUEL COSTS**

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§
§

**BEFORE THE
STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

PROPOSED FINAL ORDER

Entergy Gulf States, Inc. ("EGSI" or "Company"), the Cities of Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Rose City, Shenandoah, Silsbee, Sour Lake, Vidor and West Orange ("Cities"), the Community Associations of the Woodlands, Texas ("CATW"), the Kroger Company ("Kroger"), the Office of Public Utility Counsel ("OPUC"), Texas Legal Services Center ("TLSC"), Texas Ratepayers Organization to Save Energy ("Texas ROSE"), and Wal-Mart Texas Stores, LP ("Wal-Mart") (collectively, NUS Signatories) hereby submit their proposed final order in this case. Proposed procedural findings 1-8, 10-11, 13-15, 18 and 20-21 are consistent with the Agreed Findings of Fact separately submitted by the Company on behalf of all parties. The NUS Signatories are proposing further procedural findings, as well as findings of fact, conclusions of law and ordering paragraphs supporting adoption of their Non-Unanimous Stipulation.

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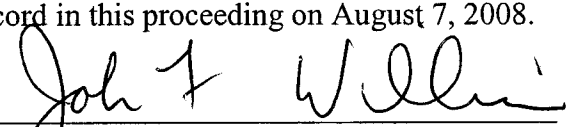
By: 

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ATTORNEYS FOR
ENTERGY GULF STATES, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document has been delivered by first class mail, facsimile, or hand delivery on all parties of record in this proceeding on August 7, 2008.


John F. Williams

SOAH DOCKET NO. 473-08-0334

P.U.C. DOCKET NO. 34800

APPLICATION OF ENTERGY GULF	§	BEFORE THE
STATES, INC. FOR AUTHORITY TO	§	STATE OFFICE OF
CHANGE RATES AND TO RECONCILE	§	ADMINISTRATIVE HEARINGS
FUEL COSTS	§	

PROPOSED FINAL ORDER

This Order approves rates, terms, and conditions consistent with the filed and amended non-unanimous stipulation (the EGSI NUS) endorsed by the Community Associations of the Woodlands, Texas (CATW), Entergy Texas, Inc. (ETI), as successor in interest to Entergy Gulf States, Inc. (EGSI or the Company),¹ the Cities of Beaumont, Bridge City, Conroe, Groves, Houston, Huntsville, Navasota, Nederland, Orange, Pine Forest, Pinehurst, Port Arthur, Port Neches, Rose City, Shenandoah, Silsbee, Sour Lake, Vidor and West Orange (Cities), the Kroger Co. (Kroger), Office of Public Utility Counsel (OPUC), Texas Legal Service Center (TLSC), Texas Ratepayers Organization to Save Energy (Texas ROSE), and Wal-Mart Texas Stores, LP (Wal-Mart) (collectively, Signatories).

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

Procedural History

1. During the period from April 1, 2006 through March 31, 2007, EGSI was an electric utility serving southeast Texas and was one of six wholly-owned operating companies of Entergy Corporation (Entergy), an investor-owned public utility holding company headquartered in New Orleans, Louisiana.
2. On September 26, 2007, EGSI filed an application requesting approval of: (1) base rate tariffs and riders designed to collect a total non-fuel revenue requirement, for the Texas retail jurisdiction, of \$605 million; (2) a set of proposed tariff schedules presented in the Company's Electric Utility Rate Filing Package for Generating Utilities (Rate Filing Package

¹ Effective December 31, 2007, Entergy Texas, Inc. succeeded to EGSI's rights and responsibilities pursuant to Section 39.452(e) of the Public Utility Regulatory Act. For continuity and ease of reference, the Company has continued to make reference to EGSI for purposes of pleadings in this case.

or RFP) accompanying EGSI's application; (3) a request for final reconciliation of EGSI's fuel and purchased power costs and fuel factor revenues for the Reconciliation Period from January 1, 2006 to March 31, 2007, as well as deferred costs from prior proceedings; and (4) certain waivers to the RFP instructions in RFP Schedule V accompanying EGSI's application.

3. The adjusted 12-month test year employed in EGSI's filing ended on March 31, 2007.
4. EGSI provided notice by publication for four consecutive weeks before the effective date of the proposed rate change in newspapers having general circulation in each county of EGSI's Texas service territory. EGSI also mailed notice of its proposed rate change to all of its customers. Additionally, EGSI timely served notice of its statement of intent to change rates on all municipalities retaining original jurisdiction over its rates and services.
5. The following parties were granted intervenor status in this docket: Alliance for Retail Markets (ARM), CATW, Cities, Kroger, OPUC, the State of Texas (State), Texas Industrial Energy Consumers (TIEC), TLSC, Texas ROSE, Texas Energy, LLC, and Wal-Mart. Commission Staff (Staff) was also a participant in this docket.
6. On October 1, 2007, the Commission referred this case to the State Office of Administrative Hearings (SOAH) for processing.
7. EGSI appealed the rate decisions adopted by the cities of Chester, Woodville, Ames, Dayton, Devers, Liberty, New Waverly, Riverside, Trinity, Bedias, Bremond, Caldwell, Calvert, Franklin, Madisonville, Somerville, Patton Village, Cut and Shoot, Willis, Plum Grove, Shepherd, Oak Ridge North, Normangee, Daisetta, Hardin, Corrigan, Groveton, Anderson, Kosse, North Cleveland, Woodloch, Midway, Panorama Village, Taylor Landing, Rose Hill Acres, China, Hearne, Bevil Oaks, Colmesneil, Kountz, Nome, Lumberton and Todd Mission.
8. As provided for in Order Nos. 3, 9, 12, 14 and 23, the Administrative Law Judges (ALJs) consolidated EGSI's appeals of the rate decisions adopted by the cities of Chester, Woodville, Ames, Dayton, Devers, Liberty, New Waverly, Riverside, Trinity, Bedias,

Bremond, Caldwell, Calvert, Franklin, Madisonville, Somerville, Patton Village, Cut and Shoot, Willis, Plum Grove, Shepherd, Oak Ridge North, Normangee, Daisetta, Hardin, Corrigan, Groveton, Anderson, Kosse, North Cleveland, Woodloch, Midway, Panorama Village, Taylor Landing, Rose Hill Acres, China, Hearne, Bevil Oaks, Colmesneil, Kountz, Nome, Lumberton and Todd Mission, with this docket and the effectiveness of the cities' ordinances was stayed pending the final disposition of this case.

9. On December 31, 2007, EGSI completed jurisdictional separation pursuant to PURA § 39.452(e), and ETI succeeded to EGSI's rights and responsibilities for retail utility service to EGSI's former Texas retail customers. Accordingly, ETI is the utility that shall observe the rates, tariffs and other requirements resulting from this order.
10. The ALJs established a procedural schedule whereby the hearing on the merits was scheduled to begin on May 13, 2008.
11. On May 12, 2008, EGSI notified the ALJs that the terms of a non-unanimous settlement had been reached and requested a delay in the start of the hearing on the merits in order to finalize a definitive written settlement. The State, TIEC, and the Staff announced ready to go forward with a hearing on the merits and requested that any hearing on a future NUS be held at the end of the hearing. However, the ALJs granted EGSI's request for delay.
12. On May 16, 2008, CATW, EGSI, Cities, Kroger, OPUC, TLSC, Texas ROSE, and Wal-Mart filed a term sheet reflecting the essential terms of the EGSI NUS.
13. On May 19, 2008, Staff, TIEC, the State, and TX Energy filed a proposed non-unanimous stipulation (hereinafter the Staff NUS).
14. On May 20, 2008, CATW, EGSI, Cities, Kroger, OPUC, TLSC, Texas ROSE, and Wal-Mart filed their proposed non-unanimous stipulation, (hereinafter the EGSI NUS).
15. As provided by Order No. 37, EGSI and Cities filed direct testimony and exhibits supporting the EGSI NUS on May 23, 2008.
16. As provided by Order No. 37, Staff, TIEC and the State filed direct testimony and exhibits

opposing the EGSI NUS on June 11, 2008.

17. On June 18, 2008, EGSI and Cities filed rebuttal testimony responding to Staff, TIEC and the State's testimony regarding the EGSI NUS.
18. The hearing on the merits for both the EGSI NUS and the Staff NUS took place from June 23, 2008 to June 24, 2008 and from June 26, 2008 to July 2, 2008.
19. On June 25, 2008, the Signatories to the EGSI NUS filed a letter amending certain provisions of the EGSI NUS. On June 27, 2008, EGSI filed amended spreadsheets reflecting the June 25, 2008 amendments to the EGSI NUS. In response to the amendments and associated spreadsheet, Staff, State and TIEC each filed amended or revised NUS testimony on June 30 (Staff and State) and July 2 (TIEC), 2008.
20. As provided for in Order No. 39, the ALJs considered both the EGSI NUS and the Staff NUS at the hearing on the merits.
21. All parties were allowed to file post-hearing initial briefs on July 25, 2008, and to file reply briefs on August 7, 2008.

Description of the EGSI NUS

22. The EGSI NUS establishes an overall two-step base rate increase for EGSI of \$42.5 million over present base revenues commencing with bills rendered for the first billing cycle of October 2008 (step one) and a base rate increase of \$17 million commencing with bills rendered for the first billing cycle of October 2009 (step two).
23. Coincident with the \$42.5 million base rate increase described in Finding of Fact [22], the EGSI NUS requires EGSI to implement tariffs designed to retain, on a usage basis, amounts of Rough Production Cost Equalization (RPCE) payments to be made to EGSI by Entergy Arkansas, Inc., so that the Company retains such payments and amortizes the regulatory liability, at an annual rate of \$25 million until the rates from the rate case identified in Finding of Fact [32] are implemented.

24. The EGSI NUS provides that the \$25 million in RPCE payments will be allocated among customer classes based 50% on energy consumption and 50% on base rate revenues attributable to retail customer classes and will serve as an offset to the \$42.5 million base rate increase.
25. In addition to the provisions of Finding of Fact [22], beginning with the first billing cycle of January 2009, the EGSI NUS requires EGSI to implement a tariff designed, on a usage basis, for the Company to retain an additional \$17 million in RPCE payments on an annual basis until the October 2009 rate increase goes into effect. The Company's collection of the additional RPCE payments will cease upon implementation of rates in the first billing cycle of October 2009 (step two).
26. The EGSI NUS provides that the 2008 RPCE payments will be used, if and as necessary, to amortize future retentions described in Findings of Fact [22] through [25]. Any 2008 RPCE payments not needed to ensure the proper level of RPCE-related offsets will be credited to customers as an offset to fuel expense.
27. EGSI's base rate increase of \$17 million commencing with bills rendered for the first billing cycle of October 2009 (step two) will be implemented based upon an abbreviated filing by the Company on July 1, 2009.
28. The EGSI NUS requires that the Signatories agree to work in good faith with each other and with other interested parties, including any non-settling parties, to develop the form of an abbreviated filing to be made by the Company with all regulatory authorities with jurisdiction over retail rates in Texas, that is reasonable and that effectuates the purposes of the settlement to implement the step two base rate increase commencing with bills rendered for the first billing cycle of October 2009. Those Signatories that can waive rights to challenge the October 2009 increase do so, except as to accuracy of calculations and conformance of tariffs with the EGSI NUS.
29. OPUC and Cities agree to be bound by the EGSI NUS, and therefore the October 2009 (step two) base rate increase, to the extent allowed by law. Regardless of the foregoing, the

- expectation of the Signatories is that OPUC and Cities will not challenge the amount of the October 2009 (step two) increase and that any challenge or oversight by those entities will be limited to the accuracy of calculations and conformance of tariffs with the EGSI NUS.
30. The EGSI NUS provides that capacity costs associated with power purchased from third parties will be treated as eligible fuel expense or power cost recovery factor (PCRf) expense and such purchased power, whether treated as eligible fuel or PCRf, will be subject to the standards set out in P.U.C. SUBST. R. 25.236 or 25.238, as applicable, in future fuel reconciliation cases, until the implementation date of rates contemplated in Finding of Fact [32]. Each Signatory has the right to contest, in such future reconciliation cases, the reasonableness of such purchased power expenses. The Signatories have further reserved the right to assert all factual and legal arguments they asserted in this docket as the basis for purchased power adjustments in these reconciliation cases.
31. The EGSI NUS provides that an annual amount of \$5 million of transmission and distribution operation and maintenance expense will be deferred by project to a regulatory asset account beginning with the implementation date of the rates described in Finding of Fact [22] and ending with the implementation date of rates described in Finding of Fact [32]. Recovery of the regulatory asset will be included specifically in the rates described in Finding of Fact [32] immediately upon implementation of those rates.
32. The EGSI NUS requires the Company to file a rate case by December 31, 2009 based upon a test year ending June 30, 2009. Beginning with the date of implementation of rates resulting from the rate case provided for in this paragraph, all jurisdictional separation related MSS-4 purchases will be recovered through a contemporaneous surcharge and will become reconcilable purchased power expenses under P.U.C. SUBST. R. 25.236. The Signatories, however, make no commitment concerning the treatment of jurisdictional separation related MSS-4 purchases in any subsequent rate cases.
33. The EGSI NUS further provides (1) the Company will address a Competitive Generation Services tariff in the rate case described in Finding of Fact [32], (2) the Signatories are required to work in a collaborative manner toward a mutually acceptable solution prior to

- that rate case, and (3) EGSI will be made whole for any costs unrecovered due directly to implementation of the Competitive Generation Services tariff.
34. The EGSI NUS adopts a River Bend life extension adjustment consistent with the regulatory treatment of the Louisiana Public Service Commission, subject to Federal Energy Regulatory Commission (FERC) approval.
35. The EGSI NUS provides that should FERC approval of the River Bend life extension adjustment not be obtained by February 1, 2009, a regulatory asset will be created that represents a 20-year extension of the life of River Bend. The creation of the regulatory asset, if required, is intended to maintain the economic impact to all Signatories. The regulatory asset will be included specifically in the rates described in Finding of Fact [32] immediately upon implementation of those rates. Additionally, the EGSI NUS provides that the depreciation adjustment of \$2.7 million will be allowed, as identified in the rebuttal testimony of Company Witness Brian Caldwell at Exhibit BWC-R-3 on Page 27 of 28.
36. The EGSI NUS provides for the following riders:
- a. Franchise Fee Rider: incremental city franchise fees currently being recovered through a rider and any prospective incremental city franchise fees will be recovered through a rider. Existing non-incremental city franchise fees will be rolled into base rates and will not be stated separately on a bill or charged separately to customers;
 - b. Energy Efficiency Rider: A rider as proposed in the Company's Rebuttal Testimony that recovers energy efficiency costs in compliance with the requirements of P.U.C. SUBST. R. 25.181; and
 - c. Rate Case Expense Rider: A rider in the amount of \$5 million that will be amortized over three (3) years.
37. All revenue from the three riders is in addition to (1) the base rate increases provided for in Finding of Fact [22] and (2) the amount retained by the Company pursuant to Findings of Fact [22] through [25].

38. The EGSI NUS provides that the Miscellaneous Electric Service Charge for reconnection will remain at \$12.00 for low-income customers.
39. EGSI's Public Benefit Fund will be initially funded at the amount of \$2 million annually and such amount will be rolled into base rates. In order to include a greater portion of the eligible population in the program, the EGSI NUS provides that the Company use its best efforts to contract for and implement an automatic enrollment program. The EGSI NUS further requires that the funding for this program be revisited in the rate case described in Finding of Fact [32], based on the experience gained by the Company from the automatic enrollment program.
40. The EGSI NUS provides the Company's automatic enrollment program will be modeled upon the matching procedures used by other Texas utilities to identify eligible customers and will be implemented within 30 days of the Commission's issuance of the final order in this case. EGSI will provide quarterly reports regarding this program to interested parties.
41. The EGSI NUS provides the Company's low-income energy efficiency programs will be amended so as to ensure that funding is maintained for the targeted energy efficiency program initiated in 2001 in Docket No. 24469 and the Company will reinstate the Entergy Assist Program at an annual funding level of \$1.9 million, based upon 0.12% of Texas gross revenues effective January 1, 2009. The Company will use its best efforts to contract with the Texas Association of Community Action Agencies by October 1, 2008 for the administration of the Entergy Assist Program.
42. The EGSI NUS provides for the adoption of the Company's Experimental Market Value Energy Reduction interruptible tariff (Schedule MVER), expiring with the rates established in the rate case described in Finding of Fact [32].
43. The EGSI NUS provides that Storm Cost Accruals will be increased by \$2 million annually (to a total annual accrual of \$3.65 million) beginning January 1, 2009. This amount will be subsumed in revenues recovered through base rates.
44. The EGSI NUS provides the rate increase described in Finding of Fact [22] will be allocated

to all classes on an equal percentage basis. Each lamp type and wattage identified in the lighting class will receive the same equal percentage increase.

45. Of the approximately \$833 million in fuel and \$25 million in IPCR costs presented for reconciliation by the Company, \$4.5 million of fuel costs will be disallowed under the EGSI NUS. The over/under recovery balances at the end of the reconciliation period will be the beginning balances for the next reconciliation period for both fuel and IPCR.
46. All numbers referenced in the EGSI NUS are Texas jurisdictional.

Evidence Supporting the EGSI NUS

47. Considered in light of (1) EGSI's initial requested rate increase, (2) the testimony filed supporting the EGSI NUS, and (3) the evidence and testimony presented by the parties during the course of the hearing on the merits, the EGSI NUS is the result of good faith negotiation of the Signatories, with compromise from each party, and these efforts, as well as the overall result of the EGSI NUS viewed in light of the record evidence as a whole, support the reasonableness and benefits of the terms of the EGSI NUS.
48. The testimony filed in support of the EGSI NUS and the evidence from the hearing on the merits in this proceeding demonstrate that the revenue increase resulting from the EGSI NUS is just and reasonable. The record evidence further shows that the revenue increase resulting from the EGSI NUS is just and reasonable when the merits of the issues contested by Staff, TIEC and the State are considered.
49. All provisions of the EGSI NUS are reasonable in light of the overall evidentiary record, including testimony and evidence filed in support of the EGSI NUS and presented during the hearing on the merits, and in light of the overall give and take in negotiations among the Signatories, which is reflected in the interrelated terms of the EGSI NUS.
50. None of the Signatories to the EGSI NUS agrees with any specific ratemaking components underlying the revenue requirement except as specifically stated in the EGSI NUS, and no Signatory agrees to the propriety of any ratemaking principle or theory that may be said to

underlie the revenue requirement consistent with the EGSI NUS. Evidence was presented on appropriate ways of determining the total company revenue requirement. The total company revenue requirement reflected on Exhibit JDW-S-3 to the Testimony of J. David Wright in support of the EGSI NUS reflects EGSI's reasonable and necessary operating expenses and will result in just and reasonable rates within the meaning of PURA § 36.003.

51. The Signatories to the EGSI NUS agree that its terms and conditions overall result in just and reasonable rates and that the public interest will be served by resolution of the issues addressed herein in the manner prescribed by the EGSI NUS.
52. The rates established under the EGSI NUS are just and reasonable. The EGSI NUS is in the public interest and will provide EGSI with a reasonable opportunity to earn a reasonable return on its invested capital which is used and useful in providing service to the public in excess of EGSI's reasonable and necessary operating expenses as required by the Public Utility Regulatory Act (PURA)² § 36.051.
53. The Texas retail rate base established by the EGSI NUS, reflected on Exhibit JDW-S-4 to the Testimony of J. David Wright in support of the EGSI NUS, meets the requirements of PURA § 36.051 that the Commission fix a utility's overall revenues at a level that will permit it a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.
54. The Texas retail revenue requirement of the EGSI NUS does not include any: legislative advocacy expenses; charitable contributions; civil penalties or fines; payments made to cover costs of an accident, equipment failure, or negligence at a utility facility owned by a person or governmental body not selling power inside the state of Texas (except those made under an insurance or risk sharing arrangement executed before the date of loss); the costs for processing a refund or credit under PURA § 36.110; any profit or loss that results from the sale of merchandise not integral to providing utility service; rate case expenses; construction

² TEX. UTIL. CODE ANN. §§ 11.001-66.017 (Vernon 2007).

work in progress in rate base; or plant held for future use in rate base.

55. Advertising expense to promote the increased consumption of electricity or to promote the image of the electric utility industry is excluded from cost of service in the EGSI NUS.
56. Disallowable expenses (*e.g.*, legislative advocacy, entertainment, advertising products marketed by other affiliates, civil penalties and fines, donations, and other expenses listed in PURA §§ 36.061, 36.062, and 36.063) are not included in the expenses allocated or direct billed to EGSI, as reflected in the Texas retail revenue requirement in the EGSI NUS.
57. Based on the evidence presented in this docket and for purposes of this proceeding only, without future precedent, the Commission finds that EGSI's affiliate expenses in the reconcilable fuel and purchased power costs and in the Texas retail revenue requirement of the EGSI NUS are reasonable and necessary for each item or class of items of expenses, and that the prices charged to EGSI for such expenses are no higher than prices charged to their other affiliates or divisions or to a nonaffiliated person for the same item or class of items.
58. The Company's retention of RPCE payments as a means of moderating the impact of the rate increase under the EGSI NUS is reasonable.
59. As provided for in Finding of Fact [24], the hybrid customer allocation methodology of RPCE payments, based 50% on base rate revenue and 50% on energy consumption, under the EGSI NUS is reasonable.
60. [ALTERNATIVE 1]Based on the preponderance of the credible evidence bearing on the nature and characteristics of EGSI's third-party purchased power capacity costs, the Commission finds that such costs should be treated as eligible fuel expense consistent with the requirements of P.U.C. SUBST. R. 25.236. [ALTERNATIVE 2] Based on the preponderance of the credible evidence bearing on the nature and characteristics of EGSI's third-party purchased power capacity costs, the Commission finds that such costs should be recovered through a power cost recovery factor consistent with the requirements of P.U.C. SUBST. R. 25.238(b).

61. The future treatment of future JSP-related MSS-4 expenses prescribed by the EGSI NUS is reasonable given the ongoing transition of the Company's business from an entity providing utility service in Louisiana and Texas to one providing service only in Texas.
62. Schedule MVER is a reasonable market-based alternative to the Company's current interruptible service.
63. EGSI's current supplemental short term service, Schedule SSTs, is no longer reasonable and should be terminated.
64. EGSI's current interruptible service, Schedule IS, is not cost justified and should be terminated consistent with the Commission's Order in Docket No. 16705.
65. EGSI's current standby maintenance service, Schedule SMS, and additional facilities charge, AFC rate, are both reasonable and should be continued.
66. EGSI's modifications to its economic as-available power service, Schedule EAPS, including changes to the energy charges and pricing provisions, are reasonable, ensure that the schedule remains economically justified, and should be implemented.
67. The creation of a regulatory asset through which EGSI will defer for future recovery an annual amount of \$5 million in Transmission and Distribution Operating and Maintenance expense is reasonable as a means of ensuring EGSI's ability to maintain reliable service while reducing the effect of the rate increase on customers.
68. The depreciation rates in the EGSI NUS are reasonable.
69. The Texas retail revenue requirement provided by the EGSI NUS adequately accounts for the reduction to reflect consolidated tax savings as required by PURA § 36.060.
70. Pursuant to PURA § 36.052, EGSI's assumed overall rate of return of 9.95%, as reflected on Exhibit JDW-S-4 to the Testimony of J. David Wright in support of the EGSI NUS, is reasonable for purposes of this docket and need not be adjusted further.
71. Although the Signatories agree to a total revenue requirement for settlement purposes, the

Signatories do not agree to a specific dollar amount of each component of invested capital.

72. The total level of invested capital in the Texas retail revenue requirement included in the EGSI NUS is reasonable.
73. Based on the evidence in this docket, the overall total invested capital in the EGSI NUS meets the requirement in PURA § 36.053(a) that electric utility rates be based on the original cost, less depreciation, of property used by and useful to the utility in providing service.
74. For rate design purposes, the EGSI NUS allocates the base rate increase on an equal percentage revenue. The RPCE payments used to offset base rates are allocated based 50% on base rate revenue and 50% based on energy consumption. This allocation is reasonable.
75. The increase in Storm Cost Accruals provided for in the EGSI NUS are reasonable.
76. The Low-Income Programs provided for in the EGSI NUS are reasonable.
77. Based on the evidence addressing fuel-related disallowances, the disallowance agreed to in the EGSI NUS is reasonable, for purposes of this proceeding only.
78. The performance based ratemaking (PBR) plan for River Bend contemplates an annual calculation of penalties and rewards. Good cause exists to sever and defer the PBR calculation for the final seven months of the reconciliation period to the Company's next fuel reconciliation proceeding.

II. Conclusions of Law

1. EGSI is a "public utility" as that term is defined in PURA § 11.004(1) and an "electric utility" as that term is defined in PURA § 31.002(6).
2. The Commission exercises regulatory authority over EGSI and jurisdiction over the subject matter of this application pursuant to PURA §§ 14.001, 32.001, 32.101, 33.002, 33.051, 36.001–.111, 36.203, 39.452, and 39.455.
3. SOAH has jurisdiction over matters related to the conduct of the hearing and the preparation

of a proposal for decision in this proceeding, pursuant to PURA § 14.053 and TEX. GOV'T CODE ANN. § 2003.49.

4. This docket was processed in accordance with the requirements of PURA and the Texas Administrative Procedure Act.³
5. EGSi provided notice of its application in compliance with PURA § 36.103, P.U.C. PROC. R. 22.51(a), and P.U.C. SUBST. R. 25.235(b)(1)-(3).
6. Provided that certain conditions are met, the Commission may base its final order on a non-unanimous settlement.⁴ First, the Commission must afford any non-settling party the opportunity to be heard on the merits of the stipulation. Second, the Commission must make an independent finding on the merits that the terms of the settlement and the resulting rates are fair, just, and reasonable, are legal, and are supported by evidence in the record.
7. Opposing Parties were given the opportunity to be heard on the merits of the EGSi NUS and to present their own case during the hearing on the merits that took place from June 23, 2008 to July 2, 2008.
8. The EGSi NUS, taken as a whole, is a just and reasonable resolution of all issues it addresses, results in just and reasonable rates, is supported by a preponderance of the credible evidence in the record, is consistent with the relevant provisions of PURA, and is in the public interest.
9. For a utility to recover the costs of its transactions with its affiliates, PURA § 36.058 requires the Commission to find that the costs for each item or class of items of affiliate expense are reasonable and necessary and the price the utility pays is no higher than the price charged by the supplying affiliate to other affiliates or divisions or to a nonaffiliated person for the same item or class of items.

³ TEX. GOV'T. CODE ANN. Chapter 2001 (Vernon 2000 and Supp. 2007).

⁴ PURA § 14.054; P.U.C. PROC. R. 22.206; *City of El Paso v. Public Util. Comm'n of Texas*, 883 S.W.2d 179, 182-84 (Tex. 1994).

10. EGSI has complied with PURA § 36.058.
11. RPCE payments may be used to offset a portion of the Company's rate increase.
12. The creation of a regulatory asset under the EGSI NUS, through which EGSI will defer for future recovery an annual amount of \$5 million of Transmission and Distribution Operating and Maintenance expense, is reasonable to provide rate moderation to EGSI's customers and to maintain reliability of service in EGSI's service territory.
13. [ALTERNATIVE 1] Consistent with PURA §§ 36.204–.206, treatment of third-party purchased power capacity costs as eligible fuel expenses is just and reasonable and is consistent with P.U.C. SUBST. R. 25.236. [ALTERNATIVE 2] Consistent with PURA §§ 36.204–.206, recovery of third-party purchased power capacity costs through a PCRFB is just and reasonable and is consistent with P.U.C. SUBST. R. 25.238.
14. The recovery of fuel and Incremental Purchased Capacity (IPCR) costs, consistent with the EGSI NUS, is just and reasonable and complies with the Commission's fuel rule and PURA §§ 36.203(e) and 39.455. The over/under recovery balances at the end of the reconciliation period will be the beginning balances for the next reconciliation period.
15. EGSI has properly accounted for the amount of fuel and IPCR-related revenues collected pursuant to the fuel factor during the reconciliation period.
16. The revenue requirement approved herein will permit EGSI a reasonable opportunity to earn a reasonable return on used and useful invested capital in excess of reasonable and necessary operating expenses.
17. The rates implementing the retail revenue requirements are just, reasonable, comply with the ratemaking provisions in PURA, and are not unreasonably preferential, prejudicial, or discriminatory.
18. The cost allocation, revenue distribution, and rate design implementing the EGSI NUS result in rates that are just and reasonable, comply with the ratemaking provisions in PURA, and are not unreasonably discriminatory, preferential, or prejudicial.

19. The methods and rates of depreciation incorporated into the Texas retail revenue requirement are proper and adequate and have been uniformly and consistently applied, in accordance with PURA § 36.056.
20. The tariffs and riders implementing the EGSI NUS are just, reasonable, and non-discriminatory.
21. An increase in EGSI's Storm Cost Accruals by \$2 million annually (to a total annual accrual of \$3.65 million) beginning January 1, 2009 is just and reasonable.
22. The low-income programs implemented under the EGSI NUS are just, reasonable, and non-discriminatory.
23. EGSI has met its burden of proof in demonstrating that it is entitled to the level of Texas retail rate base revenue set out in the EGSI NUS.
24. EGSI has met its burden of proof in demonstrating that the rates resulting from the EGSI NUS are just and reasonable, consistent with the ratemaking provisions of PURA.
25. EGSI has met its burden of proof in demonstrating that the results of the EGSI NUS are in the public interest.

III. Ordering Paragraphs

1. Rates, terms, and conditions consistent with the EGSI NUS are approved.
2. The tariffs and riders in compliance with the EGSI NUS, previously filed by EGSI on ___, are hereby approved.
3. EGSI shall retain RPCE payments in the manner described by the EGSI NUS.
4. EGSI shall timely implement the provisions of the EGSI NUS addressing low-income programs.
5. Within 30 days of the Commission's issuance of the final order in this case, EGSI will

implement an automatic enrollment program modeled upon the matching procedures used by other Texas utilities to identify eligible customers. EGSI will provide quarterly reports regarding this program to interested parties.

6. EGSI's new rates shall become effective consistent with the terms of the EGSI NUS.
7. EGSI's base rate increase of \$17 million commencing with bills rendered for the first billing cycle of October 2009 (step two) will be implemented using an abbreviated filing method on July 1, 2009.
8. EGSI shall file a rate case by December 31, 2009 based upon a test year ending June 30, 2009.
9. EGSI shall address a Competitive Generation Services tariff in the 2009 rate case and shall work with the Signatories to the EGSI NUS in a collaborative manner toward a mutually acceptable solution prior to the 2009 rate case.
10. EGSI's Storm Cost Accruals will be increased by \$2 million annually beginning January 1, 2009 and this amount will be subsumed in revenues recovered through base rates consistent with the EGSI NUS.
11. The class allocation methodology described in the EGSI NUS is approved.
12. EGSI shall terminate schedules IS and SSTS consistent with the terms of the EGSI NUS.
13. EGSI is authorized to implement schedule MVER consistent with the terms of the EGSI NUS.
14. EGSI is authorized to continue to provide its schedules SMS and AFC.
15. EGSI is authorized to implement its modifications to schedule EAPS.
16. The fuel and IPCR costs requested by EGSI are, consistent with this Order, reconciled through March 31, 2007 and are approved consistent with the EGSI NUS.

17. EGSI shall adjust its fuel over/under recovery balance consistent with the findings in this Order and file its calculations in a compliance filing.
18. The entry of this Order consistent with the EGSI NUS does not indicate the Commission's endorsement of any principle or method that may underlie the EGSI NUS. Neither should entry of this Order be regarded as a precedent as to the appropriateness of any principle or methodology underlying the EGSI NUS.
19. All other motions, requests for entry of specific findings of fact, conclusions of law, and ordering paragraphs, and any other requests for general or specific relief, if not expressly granted in this order, are hereby denied.

SIGNED AT AUSTIN, TEXAS on the _____ day of _____, 2008.

PUBLIC UTILITY COMMISSION OF TEXAS

BARRY T. SMITHERMAN, CHAIRMAN

JULIE PARSLEY, COMMISSIONER

PAUL HUDSON, COMMISSIONER