Control Number: 6525

Item Number: 1

Addendum StartPage: 0

DOCKET NOS. 6477 AND 6525

1985 NOV 15 PM 3:42
PUBLIC UTILITY COMMISSION
FILING CLERK

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	*	PUBLIC UTILITY COMMISSION OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	*	

PROPOSAL FOR DECISION CONCERNING
OFFICE OF PUBLIC UTILITY COUNSEL'S
MOTION TO DISMISS

I. Background and Procedural History

On October 1, 1985, Gulf States Utilities Company (GSU) filed a statement of intent to increase its rates within the unincorporated areas served by it. GSU is seeking authorization to increase its rates by $89,601,486, or 10.8 percent in the first year (the Step I increase) and $87,790,277 or 9.55 percent in the second year (the Step II increase), or a total of $177,391,763, or 21.4 percent, over total Texas adjusted test year revenues, assuming Commission recognition of River Bend Unit 1 as plant-in-service. GSU termed this part of its request its "Primary Filing". In the alternative, should the Commission exclude River Bend Unit 1 from GSU's plant-in-service, GSU is seeking authorization to increase its rates by $110,181,957, or 13.28 percent over total Texas adjusted test year revenues. GSU termed this part of its request its "Alternate Filing".

On October 4, 1985, the Office of Public Utility Counsel (OPC) filed a motion to dismiss the rate case.

On October 15, 1985, GSU filed a response to OPC's motion to dismiss.

The motion was orally argued at the first prehearing conference in this docket, which was held on October 21, 1985. In oral argument, OPC and the intervenor Cities argued in favor of the motion to dismiss. The State Agencies expressed agreement with the motion. The Commission's general counsel indicated that it did not oppose the motion and presented argument in support of its position. GSU argued against the motion.

The examiner recommends that OPC's motion to dismiss be granted in part and denied in part. Specifically, the examiner recommends dismissal of GSU's Primary Filing, including both the Step I and Step II rate increase requests. The examiner recommends that GSU's Alternate Filing not be dismissed, but rather that it be processed in accordance with the existing procedural schedule, unless later modified.

It should be noted that the nature of the present order is unusual and probably perplexing for the reasons described below. The complexity is due to the resolution of OPC's motion that the examiner has reached. She has tried to issue a proposal for decision which she hopes will minimize confusion and inconvenience for the Commission and the parties.

Ordinarily, denial of a motion to dismiss is handled by examiner's order, which a party can appeal to the Commission. Granting a motion to dismiss is accomplished by an Examiner's Report recommending dismissal which automatically is forwarded to the Commission for a final order. Since the examiner recommends granting in part and denying in part the motion to dismiss, this proposal for decision has elements of both. The examiner considered issuing an order denying in part OPC's motion to dismiss and an Examiner's Report recommending granting in part OPC's motion to dismiss. She rejected this approach for the following reasons. First, the issues are interconnected and probably should be considered as a whole. Second, they are sufficiently important that the Commission probably should pass on them whether an appeal is filed or not. Third, issuing an Examiner's Report in consolidated Docket Nos. 6477 and 6525 would be very confusing if part of the case is not dismissed and another Examiner's Report is subsequently issued in the same dockets. Alternatively, the examiner could sever the part of these dockets which she recommends be dismissed, have a new docket number assigned to that part and issue an Examiner's Report recommending dismissal of the new docket. There are two problems with this approach. First, if only an unfamiliar docket number appeared at the top of such an Examiner's Report, parties might not be put on notice of the implications of the decision. Second, if the Commission reached a different resolution of the various counts than did the examiner, the case might have to resevered or consolidated or both. It is confusing enough as it is.

For these reasons, the examiner decided instead to issue a proposal for decision containing both sets of recommendations, the entirety of which will automatically be submitted to the Commission without the necessity of a party filing an appeal. Deadlines are set for the filing of "exceptions" and "replies to exceptions" to the entirety of the examiner's recommendations. This nomenclature is used to prevent the parties from having to file appeals and responses thereto and exceptions and replies to exceptions.

To the extent that the Commission dismisses the case or part of the case, its order should be considered final with respect to the case or that part of the case which is dismissed. To the extent that the Commission fails to dismiss the case or part of the case, its order should be considered as an interim order of the Commission denying OPC's motion to dismiss. The final order in these dockets then would of course be the Commission's decision on the merits (unless the case is otherwise resolved by some other means, such as withdrawal).

Attached to this proposal for decision are findings of fact and conclusions of law respecting those parts of the case which the examiner recommends be dismissed. If the Commission decides to dismiss part of the case which the examiner did not recommend be dismissed, supplemental findings of fact and conclusions of law should be prepared and adopted as part of the Commission's signed order.

The examiner notes that OPC's motion to dismiss was filed before Docket No. 6525, the rate case, was consolidated with Docket No. 6477, the Commission's inquiry into GSU's fuel factor. There are issues outstanding respecting GSU's fuel factor independent of the rate case. For example, Order No. 7 in this case requires implementation of fuel cost overrecovery refunds. The parties requested an opportunity to brief the issue of the applicability of the State of Texas escheat laws before an order is issued concerning the disposition of proceeds of unclaimed refunds. Accordingly, if the Commission were to decide that the entire rate request should be dismissed, the examiner recommends that Docket No. 6477 first be severed from Docket No. 6525 and outstanding issues pertaining to GSU's fuel factor and the most recent refund be considered therein, and that only Docket No. 6525 be dismissed.

II. Opinion

OPC's motion to dismiss is divided into five counts. Each count is separately discussed in this proposal for decision.

A. Count I: Dismissal of Entire Case Due to Use of Stale Test Year

The examiner recommends denial of Count I of OPC's motion to dismiss.

1. OPC's and Cities' Arguments

In the motion to dismiss, OPC argued as follows. Both GSU's Primary Filing and its Alternate Filing should be dismissed on the ground that neither is based on a statutorily valid test year. Section 3(t) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985) defines "test year" as "the most recent twelve months for which operating data for a public utility are available and shall commence with a calendar quarter or a fiscal year quarter" (emphasis added). PUC. PROC. R. 21.2 contains identical language. The Commission's authority to require that rates be based on an historic test year was affirmed in Suburban Utility Corporation v. Public Utility Commission of Texas, 652 S.W.2d 358 (Tex. 1983, reh. den.). The most recent twelve month operating period commencing with a calendar quarter prior to GSU's filing was the period October 1, 1984 through September 30, 1985. The next most recent was the period July 1, 1984 through June 30, 1985. Both GSU's filings are based on a test year April 1, 1984 through March 31, 1985.

OPC argued that the Commission has the authority to dismiss the rate case due to use of a stale test year on three grounds. First, GSU has failed to invoke the Commission's jurisdiction under Section 43(a) of the PURA, which is both a generally recognized ground for dismissal and a specific ground for dismissal without hearing under P.U.C. PROC. R. 21.82(a)(2). Second, GSU's application is incomplete, which is a specific ground for dismissal under P.U.C. PROC. R. 21.69(a). Third, GSU's petition is both moot and obsolete, which are specific grounds for dismissal under P.U.C. PROC. R. 21.82(a)(2).

Respecting the first ground, OPC further argued that GSU has invoked the Commission's jurisdiction in this case under Section 43(a) of the PURA by filing a statement of intent to change its rates. PURA Section 43(a) provides, in part, that: "the statement of intent shall include... such other information as may be required by the regulatory authority's rules and regulations". P.U.C. PROC. R. 21.69(a) requires, inter alia, that a utility's statement of intent or application include the following:

> In addition, such filing shall include annual company financial statements that have been examined and reported on by an independent certified public accountant, the date of such statements to be within the test year.... Also, the filing shall include a report on a test year review made by the independent certified public accountant that covers the test year. The required procedures for the test year review shall be included in the Commission-prescribed rate filing package. (emphasis added)

Because the test year used by GSU does not meet the definition of that term contained in Section 3(f) of the PURA or P.U.C. PROC. R. 21.2, GSU has failed to comply with the filing requirements of P.U.C. PROC. R. 21.69(a), and by reference, the jurisdictional requirements of PURA Section 43(a).

Respecting the second ground, OPC further argued as follows. P.U.C. PROC. R. 21.69(a) requires:

> In addition, the utility must complete and submit 15 copies of the commission-prescribed rate filing package and all the applicable schedules contained therein in order to complete an original filing, and failure to file such complete rate filing package shall be considered an incomplete filing, and any application or statement of intent to change rates shall be subject to being dismissed, and any time limits shall not begin to run thereon. (emphasis added)

The Commission-prescribed rate filing package (RFP) referenced in P.U.C. PROC. R. 21.69 is replete with specific requirements for "test year" data. Because the Company has failed to comply with the definition of "test year" contained both in the PURA and the Commission's rules, it has failed to comply with the filing requirements for each of these schedules, OPC contends.

OPC commented that GSU may argue that a waiver of the filing requirements of P.U.C. PROC. R. 21.69(a) is justified. P.U.C. PROC. R. 21.69(d) provides that the items required to be included in the Commission-prescribed RFP under P.U.C. PROC. R. 21.69(a) may be "modified by the Commission for good cause." GSU has not included any such good cause plea in its application, however. Moreover, P.U.C. PROC. R. 21.69(d) would not authorize the Commission to alter the Legislature's definition of the term "test year." Finally, the reason for requiring operating data for the "most recent" test year period is to assure that the Commission has the most current, accurate picture of the Company's condition possible. This rationale is even more critical in this case, given that GSU's residential rates are already the highest in Texas.

OPC further argued that in GSU's last rate case, Docket No. 5560, the same issue of the ability of the Company to file a timely case was raised in connection with the rate base treatment of the Big Cajun Plant. In response, the Company's Executive Vice President for Finance, Joseph L. Donnelly, filed rebuttal testimony which included the following claim:

> The fastest that Gulf States could be able to prepare a case is three to four months after the end of the test year. (Docket No. 5560, GSU Exhibit 47, p. 10, lines 15-17)

In this case the Company took more than six months to file its case after the test year ended even though it was aware that this timing issue would likely be raised again in this case.

In oral argument Public Counsel Jim Boyle argued as follows. It is especially important that the most current test year data be available due to changes in inflation, interest rates and productivity since the end of GSU's test year. Several utilities have filed rate cases with less stale test years. Examples are Texas Utilities Electric Company (2 months), West Texas Utilities Company (2 months and 10 days), Houston Lighting and Power Company, and Southwestern Bell Telephone Company (almost 3 months). In response to a question by the examiner, Mr. Boyle indicated that he believes the definition of "test year" in PURA Section 3(t), "the most recent 12 months for which operating data for a public utility <u>are available</u>" (emphasis supplied), to mean the nearest quarter by which the utility can get the RFP together. He did not mean that just because this case was filed on October 1, 1985 that GSU is required to use a test year ending September 30, 1985. Finally, when GSU extended its effective date 45 days to allow the staff to complete a prudence review for GSU's nuclear power plant, River Bend, Mr. Boyle argued that the test year is now even more stale and thus even more reason exists to dismiss the case on that basis.

In oral argument, Don Butler for the Cities stated the following. GSU always seems to file using a stale test year. Letting the utility choose what test year to use allows it to select a favorable period and puts the burden on other parties to reconstruct recent events by developing recommendations for known and measurable changes. Mr. Butler argued that the word "available" in PURA Section 3(t) does not mean that, the utility is allowed to get the data together at its convenience.

2. GSU's Arguments

GSU disagreed with OPC's argument that the rate case can be dismissed without a hearing if it appears that the requirements respecting use of a test year contained in the PURA and the Commission's rules were not complied with. GSU argued as follows. The currency of test year data does not affect the Commission's jurisdiction, nor does it make the filing moot or obsolete. Moreover, contrary to OPC's assertion, Section 21.69(a) of the Rules provides no "specific ground for dismissal." Grounds for dismissal without hearing are listed only in Section 21.82(a), and questions about test year data are not among them.

GSU further argued that the test year used in its application is "the most recent twelve months for which operating data for a public utility are available." The term "available" means that utilities are not required to do the impossible and produce a RFP instantly upon conclusion of the test year or issuance of financial statements for the test year period. Rather, the utility is given a reasonable period of time to organize such data into the format required by the Commission, and to meet the Commission's other requirements for complete application in a major rate case. GSU's petition for authority to change rates states at 11: "The test-year upon which this rate increase request is based is the 12-month period beginning April 1, 1984 and ending March 31, 1985. This test period is the most recent 12-month period for which operating data is available for the preparation of this rate increase Application." Thus GSU complied with the requirements of PURA and the Commission rules, and no waiver was needed.

GSU observed that a new RFP form was recently distributed to all electric utilities with a cover letter dated January 7, 1985 and signed by the Secretary of the Commission. That letter stated that the form "should be utilized for all test years ending December 31, 1984, or later." The new form added at least 28 new schedules to the filing package and changed or added to at least 30 existing schedules. Those new schedules, changes and additions have added significantly to the time and effort required of the filing utility. So far, only three investor-owned electric utilities, GSU, Central Power & Light Company (CP&L), and El Paso Electric Company (EPEC), have filed using the new form. None of them had the benefit of their own prior experience in

complying with the new requirements or, since all three filed within a few months of each other, of the experience of the others in any significant way. Shown below are the pertinent filing data with regard to test year for those three utilities:

Docket No.	Utility	Test Year	Filing Date	Time Elapsed
6350	EPEC	12-31-84	6-24-85	5 Mos., 24 Days
6375	CP&L	12-31-84	7-9-85	6 Mos., 9 Days
6525	GSU	3-31-85	10-1-85	6 Mos., 1 Day

Clearly, GSU's performance is well in line with that of the other two utilities.

GSU provided similar data respecting rate cases by other electric utilities filed even before the RFP form was amended. These cases, filed between June 1983 and June 1984, involved an elapsed time between test year end and rate case filing ranging from approximately two to five months.

GSU argued that the requirements for a RFP are particularly great for GSU due to the Commission's 1981 Order in a prior GSU rate case, Docket No. 3871. In that proceeding, staff witnesses Harvey L. Winkelmann and Milton B. Lee proposed that GSU be required, in future cases, to provide a cost-of-service study on a total company basis rather than on a retail Texas basis as GSU had done in that proceeding. In that case, GSU witness David N. Beekman, at page 19 of his written rebuttal testimony, stated that the staff's proposal would "substantially increase the time need to prepare a rate filing," and "would add about 2 man-months to the effort needed to prepare a rate filing." On page 20 of that testimony, he stated that "the sheer size and complexity of the filing would increase dramatically," and that "the proposed change . . . might require an additional volume of about two inches." The Commission, apparently concluding that the additional effort and regulatory lag that the staff had proposed be imposed on GSU was nonetheless appropriate, adopted the staff's proposal. (7 P.U.C. BULL. 410 at 443, 447, 450 (1981).) In Docket No. 3871, the pertinent material referred to by Mr. Beekman was contained in three volumes. In this proceeding, Docket No. 6525, the same kind of material fills five volumes in each of the two filings (Volumes 14 through 18). In Docket No. 4510, the first GSU rate case following Docket No. 3871, the elapsed time increased from four months and one day to five months and ten days. Hence, the Commission's Order in Docket No. 3871 added significantly to the time it takes GSU to meet the Commission's requirements.

GSU also argued that its position as a utility answerable to three separate jurisdictions--Texas, Louisiana and the Federal Energy Regulatory Commission--required a meticulous handling of voluminous data in order to allocate properly expenses and revenues among those three jurisdictions.

GSU provided the following data concerning its previous rate cases:

Docket No.	Test Year	Filing Date	Time Elapsed
2677	12-31-78	7-2-79	6 Mos., 2 Days
3298	12-31-79	6-17-80	5 Mos., 17 Days
3871	12-31-80	5-1-81	4 Mos., 1 Day
4510	12-31-81	6-10-82	5 Mos., 10 Days
5560	6-30-83	1-6-84	6 Mos., 6 Days

As can be seen from this history, GSU has never been able to file a case sooner than four months after the end of the test year.

GSU further stated that this particular GSU filing required an unusual amount of work. The required affirmative showing of prudence for the River Bend unit, for example, necessitated an exhaustive review and analysis of the planning for and construction of that unit. Moreover, GSU's concern regarding the Commission's possible treatment of River Bend as not constituting plant-in-service led GSU to submit two separate filings. As a result, the sheer volume of testimony and related exhibits and data filed by GSU in this proceeding is beyond anything ever filed by GSU before, consisting of forty volumes in two separate rate filing packages, with twenty-two witnesses for each, and several thousand pages of testimony, supporting exhibits and data. To suggest that this could have been accomplished any faster than it was is belied by the briefest examination of the case that GSU has presented.

With respect to Mr. Donnelly's testimony in Docket No. 5560 referenced by OPC, GSU argued as follows. Mr. Donnelly merely stated that the "fastest" a filing could be prepared was three to four months after the test year. He never suggested that such a time frame was either required or typical. Moreover, at page 3 of the Prepared Testimony of GSU's witness Mr. D.N. Beekman submitted in this Docket, Mr. Beekman states that the March 31, 1985 ended test year "is the most recent twelve-month period beginning with a calendar quarter for which the operating data, including all analysis necessary to submit a rate application, are available."

GSU argued that without a painstaking and time-consuming review, analysis and organization of the test year data, GSU would inevitably be less certain of the accuracy of the data that it has filed with the Commission in this proceeding. This simple fact belies OPC's assertion that "(t)he more current operating data is, the more accurate it will be."

GSU further argued that the economic self-interest of a utility seeking rate relief militates strongly in favor of an expeditious filing. Once the utility determines that it needs a change, it has nothing to gain and much to lose by proceeding in a dilatory fashion.

3. Examiner's Conclusions and Recommendations

As discussed by OPC, the Commission clearly has the authority to dismiss a rate case without a hearing if the application does not comply with the test year requirements set forth in the PURA or the Commission's rules. (See e.g., Docket No. 6440, Application of Sam Rayburn G&T, Inc. for Authority to Change Rates (unpublished, November 13, 1985).) Docket No. 6440, for example, involved a petition which was obsolete on its face, since it was based on a test year which was more than two years old. Also, in that case, the utility admitted that it could have based its application on a more recent test year. The present case, however, presents a different situation.

In the examiner's view, the central issue is whether or not GSU's test year constitutes "the most recent twelve months for which operating data for a public utility are available and shall commence with a calendar quarter or fiscal year quarter." The examiner agrees with the interpretation of the word "available" which appears for the most part to have been held by the parties. That interpretation is that the test year must be the most recent twelve months of operating data, commencing with a calendar or fiscal year quarter, which the public utility could have used in preparing its application in compliance with the requirements of applicable law and filing it on the date filed. GSU argues that its test year meets this definition. OPC and other parties disagree.

In determining what period of time it is reasonable to allow a utility to prepare its application after the end of the test year chosen, one must consider the legal requirements the completed RFP must meet and the penalties for failure to do so.

The legal requirements for a sufficient application are set forth in the PURA, the Commission's rules and the RFP. GSU is correct that the new RFP form, which the examiner proposes official notice be taken of, prescribes numerous schedules which are described with considerable specificity. Additional requirements applicable to major rate cases like GSU's are set forth in PURA Section 43(a) and P.U.C. PROC. R. 21.62(a), (b), (c) and (e), and 21.69(a). In addition to the requirements relating to the petition, statement of intent, schedules, workpapers and reports, the utility must submit in written form the testimony and exhibits which form the entirety of its direct case. In addition, under PURA Section 40, the utility has the burden of proof. The filing requirements are intended to allow the application to be considered in an orderly and efficient manner, and to enable the Commission and the parties to cope with the harsh reality of a review period which under PURA Section 43(d) ordinarily is only 185 days long.

Failure properly to comply materially with the legal requirements subjects the utility to possible dismissal of its rate case (P.U.C. PROC. R. 21.69, 21.82(a)(5)), or to involuntary delay of the effective date of the requested rate increase (P.U.C. PROC. R. 21.65(b).) In fact, GSU is at risk of just such an outcome in this case. Pursuant to the general counsel's motion, the examiner issued Order No. 5 finding GSU's application to be materially deficient, although not to an extent justifying outright dismissal on the grounds urged by general counsel. This invoked P.U.C. PROC. R. 21.65(b) which allows GSU ten days after the order was issued to correct deficiencies before postponement of its effective date.

The examiner rejects OPC's argument that GSU's test year should be considered especially stale because of GSU's 45-day extension of its effective date to allow the staff time for its study of the prudence of River Bend. Any other construction would discourage utilities from ever voluntarily extending the 185-day statutory review period. GSU's extension of the effective date was in public interest, permitting a more thorough investigation of an application.

If one accepts the argument that GSU should have filed a rate case using a test year ending June 30, 1985, GSU would have had three months and one day to assemble the entire application. Considering the stringent requirements for a major rate filing, the penalties for failure to meet them, the existence of a new Commission-prescribed RFP and the importance of the present case, the examiner is of the opinion that GSU took a reasonable amount of time after the expiration of the test year to file this rate case. Accordingly, the examiner recommends that GSU's entire rate case not be dismissed due to use of a stale test year.

B. Count II: Dismissal of Step II of Primary Filing

The examiner recommends granting Count II of OPC's Motion to Dismiss.

1. OPC's and General Counsel's Arguments

OPC argued that Step II of the Primary Filing must be dismissed because it fails to comply with Section 3(t) of the PURA and the Commission's requirements for a statement of intent. GSU proposed to implement the second year increase of its Primary Filing 365 days after implementation of its first year increase. Even if GSU were to persuade the Commission to allow it to put the first year increase into effect on an interim basis on January 1, 1986, the second year increase would not take effect until a year and three-quarters after the end of the test year. Under the more likely result that step one rates will take effect after a minimum of 185 days from the filing date, the step two rates would take effect more than two years after the close of the test year upon which the year two rates would be based. This would reduce the test year concept to an absurdity. This has been recognized by other state Commissions:

> The judicial decisions on the subject of the appropriate test year in a utility rate case uniformly adhere to the rule that the test period should be based on the utility's most recent actual experience with such adjustments as will make the test period reflect typical conditions in the immediate future.... The propriety or impropriety of a test year depends upon how well it accomplishes the objective of determining a fair rate of return in the future. Thus the realistic approach to this issue, since rates are fixed for the future and not for the past, is to use the most recent available data for a 12-month period, adjusted for known changes which will occur within a reasonable time after the end of said period so as fairly to represent the future period for which the rates are being fixed. Re General Telephone Company of Florida, 19 PUR4th 227 (Fla. PSC 1977). (citations omitted)

In oral argument Mr. Alfred R. Herrera of general counsel cited Docket No. 6027, the most recent rate case involving the Lower Colorado River Authority (LCRA) for the proposition that the Commission can dismiss Step II of GSU's primary filing.

2. GSU's Arguments

GSU argued that the Commission has the authority to approve the two step rate moderation plan. Section 16 of the PURA gives the Commission broad authority "to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of (its) power and jurisdiction" over public utilities. The Commission and OPC are bound by the mandate of the PURA "to protect the public interest inherent in the rates and services of public utilities." (PURA Section 2.) The two step plan is designed to help the public bear the costs of bringing River Bend Unit 1 into commercial operation. The Commission has the flexibility under its statutory authority to consider and adopt ratemaking plans like that proposed by GSU. The Commission would be ill-advised to impose upon itself the narrow view of its ratemaking power and authority that would be implied by acceptance of OPC's view.

GSU stated that contrary to OPC's assertion, the PURA definition of test year is not a bar to the second step of the Rate Moderation Plan. The Rate Moderation Plan, as proposed, makes the tariff sheets embodying both the first and second year steps effective within 35 days of the October 1, 1985 filing date. While the tariffs will be effective following suspension, the second step is not proposed to be implemented until one year after the first step increase is proposed to be implemented. This proposal fully complies with the statutory requirements of PURA.

GSU further argued that in Docket No. 5560, the impending termination of a favorable fuel contract forced GSU to seek approval for a second step rate increase one year after an initial increase was implemented. OPC raised the same arguments in its motion to dismiss in that case. A settlement among the parties allowed the second step increase to proceed as a separate docket. That agreement by its terms has no precedential value, but it is worth noting that there is no Texas authority that prohibits two step rate increases. Other

state Commissions have approved two step rate increases in appropriate circumstances.

Even if the Commission ultimately decides that it cannot approve the second step of GSU's Rate Moderation Plan, it cannot do so summarily without a hearing. Once the utility files a statement of intent to change its rates, pursuant to PURA Section 43(a), the Commission "shall . . . enter on a hearing to determine the propriety of such change . . . ." (PURA Section 43(c).) The statute continues that "(i)f, after hearing, (it) finds the rates to be unreasonable or in any way in violation of any provision of law, the (Commission) shall determine the level of rates to be charged or applied by the utility . . . ." (PURA Section 43(f) (emphasis added).) In other words, the Commission may alter the filed rate request only after it has held a hearing on the utility's filing. OPC's motion raises questions of fact relating to adequacy of the test year data and effectively proposes a Commission policy that would require utilities to prepare major rate change filings based only on the most current quarterly figures. Such questions and issues cannot be decided without a hearing.

3. Examiner's Conclusions and Recommendations

As noted in Section I of this order, the Commission clearly has the authority to dismiss a case on the grounds that a stale test year was used. In a report adopted by the Commission in Docket No. 6440, the Commission held:

> P.U.C. PROC. R. 21.82 provides for dismissal without a hearing for reasons which include "moot questions or obsolete petitions". The fact that both moot questions and obsolete petitions are referred to suggests that a case can be dismissed for reasons in addition to, for example, an affirmative showing of a change in the facts or the law which has mooted the case. When a rate case is involved, the examiner is of the opinion that the phrase "obsolete petition" should be read in conjunction with the definition of "test year" in PURA Section 3(t) and P.U.C. PROC. R. 21.2, so that a rate application which is not based on the most recent 12 months for which operating data for a public utility are available, commencing with a calendar quarter or a fiscal year quarter, is subject to dismissal as an obsolete petition.

(Docket No. 6440 Examiner's Report at 7 (unpublished, November 13, 1985).) The Commission concluded that that case should be dismissed for reasons including the following. (Id. at 3, 8) The Commission's ability to meet the ratemaking requirements of PURA Sections 39(a) and 41(c) would be frustrated by the processing of an application with an obsolete test year. Processing such an application would shift the burden of proof to other parties to determine the many other costs or revenues of the utility which may have changed since the end of the test year. They would be required to request through discovery and organize information which should have been provided by the utility at the outset. Given the statutory time constraints, and the utility's greater level of resources, the Commission concluded that in that case this burden should be left with the utility. Docket No. 6440 involved a request by a customer-owned electric cooperative for a non-major rate increase. Certainly the above concerns would apply with far greater force in the present docket.

The examiner concludes that Docket No. 6027, the LCRA case cited by general counsel, is more relevant to the issue presented in Count II of OPC's motion to dismiss than is the decision concerning GSU's fuel costs in Docket No. 5560 cited by GSU. The Commission has recognized that fuel costs are unique. P.U.C. SUBST. R. 23.21(b) states: "In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses." A different and less stringent standard is used for fuel expenses: test year expenses as adjusted for known and reasonably predictable changes. The use of this different standard implies the possibility that the periods of possible changes in test year figures which are considered in setting rates might not match for fuel as opposed to other expenses. The Commission has decided that because of the unique nature of fuel expense, use of a less stringent standard nonetheless is justified.

Unlike the second step increase proposed in Docket No. 5560, Step II of the Primary Filing in the present case does not propose changes simply for the purpose of accounting for a huge increase in fuel expense. The Step II request concerns all items of GSU's revenue requirement.

In the LCRA case, LCRA requested a two-step increase in one RFP, alleging that the second step increase was required primarily but not completely by LCRA's increased debt service requirements at a future date certain. The Commission, through Chairman Philip Ricketts, at its Final Order Meeting of January 24, 1985 stated:

> I think there are very limited circumstances... in which the Commission can dismiss a case without a hearing. I think one of them is where what is being sought is simply not supported by the filing pursuant to the Commission's rules. And very clearly and unambiguously, I think... that has to be the case. But in this instance there would be a very fundamental deficiency in the severed proceeding in that we would not have a full Rate Filing Package on the most recent historical data prior to the date of the second step...
>
> But in my opinion, we do have legal authority in this case to dismiss the second step on the basis (that)... it is not now supported by any type of filing which would provide for full Commission review of the revenues and expenses of the utility on a most recent test year prior to the effective date of the second step.

(January 24, 1985 Final Order Meeting Tr. at 73-74.)

In dismissing the "Step Two" request the Commission entered the following Order:

> 2. Pursuant to the requirements and authority set forth in Sections 3(t), 16(a), 17(e), 37, 39-41 and 43(a) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1984), P.U.C. SUBST. R. 23.3 and 23.21 and P.U.C. PROC. R. 21.2, 21.69(a) and 21.106(a), Step Two of the LCRA's proposed rate increase, Docket No. 6046, is hereby DISMISSED.

The point is that if the Commission decides now what rates will be in the distant future based on a current test year, that test year will be quite obsolete by the time the rate increase is finally implemented. This violates the Legislature's clear intent that a current test year be used in setting rates. (PURA Section 3(t).) In fact, the problem is worse when considering a rate increase to be implemented in the distant future using a current test year than when considering a rate increase to be implemented in the near future using an old test year. The reason is that in the latter situation, actual data will be available on which to base determinations of known and measurable changes, whereas in the former situation, "known" and "measurable" changes to bring the test year up to date would have to be based on estimates. Of course, known and measurable changes can be positive or negative.

GSU's proposed Step II rate increase if granted would be implemented no sooner than December 31, 1986. The same outcome could be achieved by the Commission considering a rate case filed in June 1986, for example, using a test year ending December 30, 1985. This would be nine months more current than the test year used in the present case. Moreover, to the extent that rates set in response to GSU's Step I filing are implemented later than December 31, 1985, the rates set in response to Step II would be implemented that much later. Thus the same result could be accomplished by GSU filing a request for the Step II rates using an even later test year than one ending December 30, 1985. This would have the added advantage of yielding actual data for a critical period, actual operation of River Bend, assuming no further delays.

For these reasons, the examiner recommends dismissal of Step II of the Primary Filing.

C. Count III: Use of Projected Data in Alternate Filing

The examiner recommends that Count III of OPC's motion to dismiss be denied.

OPC argued that the Alternate Filing should be dismissed because according to GSU witness Willis, rather than basing the Alternate Filing on the test year construction work in progress (CWIP) level:

> the Company proposes to continue to accrue a return (at the Company's AFUDC rate) on the difference between 50 percent of the River Bend CWIP balance at March 31, 1985 and the balance of the unit's expected cost at December 31, 1985 (the expected commercial in-service date of the unit). (Docket No. 6525, Willis Direct Testimony at 22.)

Based on this representation, it is obvious that the Alternate Filing is based on projected, rather than historic CWIP data. Thus it does not comply with the historic test year definition set out in Section 3(t) of the PURA and P.U.C. PROC. R. 21.2 and should be dismissed for the reasons argued in Count I.

GSU argued that its request for inclusion of River Bend in CWIP is identical to the treatment previously authorized by the Commission, and is based not on projections but on actual test year data. GSU also proposes the treatment described in the testimony quoted above for the 50 percent of River Bend costs not included as CWIP in rate base. This proposal springs from GSU's concern about its ability to earn a return on River Bend CWIP not included in rate base following commercial operation of River Bend.

GSU's Alternate Filing appears to be an ordinary CWIP case based on historical test year data. The special treatment proposed for River Bend costs not included as CWIP in rate base will stand or fall on its own merits. However, the inclusion of this proposal in the Alternate Filing does not justify dismissal of the entire filing.

D. Count IV: Request to Include River Bend as Plant-in-Service in Primary Filing

The examiner recommends granting Count IV of OPC's motion to dismiss.

1. OPC's Arguments

OPC argued that GSU's Primary Filing must be dismissed on the ground that the theory on which it is based has previously been rejected by the Commission. In Docket No. 5560, GSU sought to treat the Big Cajun coal plant as plant-in-service even though it was not commercially operational until three months after the end of the test year. The Commission rejected GSU's argument in that case observing that Commission holdings in at least three recent major electric rate cases show unequivocally that the general rule is that reclassifications of test year CWIP to plant-in-service are not allowed. GSU's Primary Filing is based on treatment of River Bend as plant-in-service, even though that plant is not expected to become commercially operational until nine months after the end of the test year. Based on Docket No. 5560, the Primary Filing must be dismissed as res judicata under P.U.C. PROC. R. 21.82(3).

2. GSU's Arguments

GSU stated that in Docket No. 5560, the Commission held that Big Cajun could not be placed in rate base as plant-in-service because it did not reach commercial operation during the test year used in that docket. Instead, the Commission ordered that 50 percent of test year CWIP be included in rate base.

GSU argued that the Commission's decision respecting Big Cajun in Docket No. 5560 is not controlling in this proceeding as res judicata, for two reasons. First, the Commission's decision regarding the proper treatment of Big Cajun is currently under appeal before the Travis County District Court. Texas precedent makes clear that

> the taking of an appeal generally operates to deprive the judgment, or that portion of it appealed from, of the finality necessary to make it authoritative, and it can become res judicata only in the event that the appeal is withdrawn or dismissed or results in an affirmance.

(34 Tex. Jur.2d Section 472 at 522-23.)

Second, in order for a judgment to be res judicata for future actions, there must be an identity not only of parties, but also of issues and subject matter. This case raises issues entirely different from those considered in Docket No. 5560. GSU argued that at most, Docket No. 5560 provides the Commission with a holding that it might choose to follow on the basis of stare decisis principles. However, the Commission is not bound to follow precedent on the basis of stare decisis. The Commission has broad discretionary powers to set rates. (PURA Sections 16(a), 37, 38, 39(a), 41(c)(3).) Thus, the Commission must examine each rate proceeding to determine whether or not the Commission's holding respecting the Big Cajun unit in Docket No. 5560 should be applied.

Application of the Big Cajun ruling to River Bend is inappropriate, for several reasons. First, GSU's investment in River Bend is much greater, justifying careful consideration of its request to include River Bend in rate base as plant-in-service. Second, GSU's Rate Moderation Plan will effectively defer a significant portion of rate base recognition of River Bend. Third, the Big Cajun ruling offered as its rationale the need to match investment, expenses and revenues in setting rates. GSU's willingness to defer a portion of its revenue requirement in order to moderate the rate impact of River Bend makes that rationale inapposite here.

3. Examiner's Conclusions and Recommendations

On November 6, 1985, the Commission decided an issue in Docket No. 6350, EPEC's pending rate case, which is virtually identical to that raised in Count IV of OPC's motion to dismiss. EPEC had also submitted alternate filings requesting inclusion of its nuclear power plant, Palo Verde (Palo Verde), as plant-in-service and alternatively as CWIP. The Commission dismissed the filing requesting inclusion of Palo Verde as plant-in-service. The Commission found that the plant-in-service filing contravenes the rule enunciated through prior Commission case law prohibiting inclusion of test year-end CWIP in plant-in-service, does not meet known and measurable standards because it is based upon estimated costs, and violates the matching principle due to the utility's mismatching of revenues, expenses and investment levels. The Commission further held that as a matter of policy, the parties should only be required to go forward with one case in the interests of administrative efficiency.

The examiner recommends that GSU's Primary Filing also be dismissed, based on the Commission's decision in Docket No. 6350, and for the reasons expressed herein.

There is no dispute concerning the fact, which is evident from GSU's petition and statement of intent, that River Bend was not commercially operable before the end of the test year. GSU estimates the commercial operation date as December 30, 1985, nine months after the end of the test year. Because the commercial operation of River Bend is a future event, its date is inherently uncertain. However, even assuming no delays, the unit would become commercially operable three months after the case was filed, and only a month and one week before the intervenors must prefile their entire revenue requirement cases, a month and two weeks before the staff must prefile and a month and three weeks before the hearing must begin.

A utility's plant-in-service is set at "the original cost of property used by and useful to the public utility in providing service". (PURA Section 41(a).) Original cost is "the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use... less depreciation." (Id.) "Cost of facilities ... shall be separated or allocated as prescribed by the regulatory authority." (PURA Section 41(b).)

Obviously, a decision concerning inclusion of any power plant in rate base as plant-in-service is not simple. The parties and the Commission must ascertain the exact original cost of the plant, as well as the percentage, if any, of the plant which should be considered "used and useful". As pointed out by GSU in its response to Count I of OPC's motion to intervene, this task is considerably more difficult in this case than in most. GSU is answerable to three separate regulatory jurisdictions, among which the cost of River Bend must be properly allocated. In addition, an exhaustive review and analysis of the planning for and construction of River Bend will be needed. GSU also comments on the unusually large size of its investment in River Bend. Just as was true for GSU in its preparation of its direct case, each of these factors should dramatically increase the work the intervenors, staff and Commission would have to perform to respond appropriately to the issues associated with including River Bend in plant-in-service.

Even if one assumes that all of the information necessary for the parties to finalize their plant recommendations will be available instantly upon commercial operation of River Bend, which would appear unlikely, information respecting the actual expenses of operating the new plant will not yet be available, and certainly not for a period of time arguably sufficient to be considered representative of costs which will be incurred during the period the new rates will be in effect. Only operating expenses which are reasonable and necessary may be allowed in rates. (PURA Section 39(a).)

These factors are one reason for the standard that power plants will be classified from CWIP to plant-in-service only if they are used and useful by the end of the test year. This standard ensures that actual data respecting the cost of the power plant and the expense of operating it for a period of time will exist, and will be available soon enough to enable other parties and the staff a fair opportunity to develop their recommendations, and to permit a full and informed exploration of the issues at the hearing.

One should note that regulatory lag is inherent in the concept of a utility whose rates are regulated. This lag is as short in Texas as it is possible for the examiner to imagine. The utility chooses when to file a rate case. The test year is to be as current as possible. Barring an extension of the effective date such as that volunteered by GSU in this case, a final order must usually be issued within 185 days, a prodigious task for the filing submitted by GSU, which GSU acknowledges to be extraordinarily voluminous and complex. Thus the period between expiration of the test year and the implementation of new rates can be seen as the time inherently necessary for the utility to accumulate and present actual data, for the parties to evaluate it, and for the Commission to formulate its final decision. Contrary to GSU's argument, the fact that the issues in this case are of the magnitude that they are seems to the examiner to argue not in favor of, but against, shortening this brief period for data gathering and evaluation.

As noted in Docket No. 6350, reclassification of a nuclear power plant at this stage from CWIP to plant-in-service would require the Commission to base a substantial part of its rate determination on mere estimates, not on test year figures adjusted for known and measurable changes as contemplated in the Commission's rules and in case law respecting utility ratemaking. It would violate the matching principle by resulting in a mismatching of revenues, expenses and investment levels. It would require the parties and the Commission to dissipate their limited resources and review time in an effort to try two enormous GSU rate cases simultaneously.

GSU argued that the Commission cannot dismiss the Primary Filing without a hearing. The examiner disagrees. The Commission is not required to try to finality every innovative rate proposal simply because a utility makes it. If it were, it would have been required to hold extensive hearings on including River Bend in plant-in-service had GSU made such a request six months or a year ago or five years ago. Nor would there be any limit to the number of innovative proposals a utility could make in one rate filing. PURA Section 16(a) provides: "The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction." The examiner concludes that the Commission's control over its own docket to the extent contemplated by Count IV of OPC's motion to dismiss is absolutely necessary and convenient to the Commission's ability to carry out its statutory responsibilities. The Commission has the authority to dismiss GSU's Primary

Filing, and the examiner recommends that it do so for the reason expressed in the EPEC case and in this proposal for decision.

E. Count V: Use of Alternative Filings

OPC argued that GSU's filing must be dismissed under P.U.C. PROC. R. 21.82(a)(4) on the ground that the Alternate Filing will result in an "unnecessary duplication of proceedings." GSU has submitted two separate and complete rate increase requests to implement rates for the same next rate year. Each case contains distinctly different proposed tariff sheets implementing different amounts of rate increase requests. The difference in the proposed ratemaking treatment of River Bend between the two cases impacts virtually all major revenue requirement issues in each case. GSU should be required to elect a single theory it wishes to proceed on in this case with regard to the ratemaking treatment of River Bend. Should that theory be rejected, GSU's remedy is properly at the courthouse, not by filing multiple simultaneous rate cases at the Commission. Otherwise, every rate case would have the potential of multiplying into as many separate and simultaneous rate cases as there are controversial ratemaking issues involved. This would put an intolerable burden on the Commission and intervenors.

GSU argued that due to uncertainty and its implications for GSU's financial condition, GSU had no choice but to file alternate filings. It further argued that the Alternate Filings do not impose an undue burden on the Commission or the parties. Rather, they provide an opportunity for full consideration of both approaches. Finally, Rule 48 of the Texas Rules of Civil Procedure for district and county courts provides that a party may set forth two or more statements of a claim or defense alternatively or hypothetically.

In its response to Count I of OPC's motion, GSU argues that the existence of the alternative filings generated so much work that GSU needed additional time after the end of the test year to file. However, in its response to Count V, GSU argues that the same fact would not generate much work for the parties and the Commission. The examiner concludes that in this respect GSU is carrying its right to argue in the alternative to extremes. The examiner agrees with OPC's characterization of the burden which processing these alternate filings would place upon the parties and the Commission.

However, in light of her recommendation with respect to Count IV, the examiner finds it unnecessary to decide whether or not utilities generally have the right to file alternative RFPs to be considered simultaneously. Based on the facts in this case, the examiner has concluded that one of the two alternatives, specifically the Primary Filing, should be dismissed, which would moot OPC's Count V.

III. Findings of Fact and Conclusions of Law

The examiner recommends that the Commission adopt the following Findings of Fact and Conclusions of Law.

A. Findings of Fact

1. On October 1, 1985, GSU filed a statement of intent to increase its rates within the unincorporated areas served by it. GSU is seeking authorization to increase its rates by $89,601,486 or 10.8 percent in the first year (the Step I increase) and $87,790,277 or 9.55 percent in the second year (the Step II increase), or a total of $177,391,763, or 21.4 percent, over total Texas adjusted test year revenues, assuming Commission recognition of GSU's nuclear power plant, River Bend Unit 1, as plant-in-service. GSU termed this part of its request its Primary Filing. In the alternative, should the Commission exclude River Bend from GSU's plant-in-service, GSU is seeking authorization to increase its rates by $110,181,957, or 13.28 percent over total Texas adjusted test year revenues. GSU termed this part of its request its Alternate Filing.

2. On October 4, 1985, intervenor OPC filed a five count motion to dismiss.

3. On October 15, 1985, GSU filed a written response to OPC's motion to dismiss.

4. The motion was orally argued before the examiner at an October 21, 1985 prehearing conference. The motion was supported by the intervenors OPC, the Cities, and the State Agencies and not opposed by the Commission's general counsel. GSU argued against the motion.

5. GSU's petition states on its face the following. The test year utilized in the RFP was the 12-month period beginning April 1, 1984 and ending March 31,1985. GSU is proposing that the Step II rate change not be implemented until 365 days after the Step I rate change is implemented. GSU is reserving a right to request that the Step I rates be implemented as interim rates should River Bend begin commercial operation before the Commission's final order in this case. The anticipated commercial operation date for River Bend is December 31, 1985.

6. The test year utilized in this case would not constitute the most recent 12 months commencing with a calendar or fiscal year quarter for which operating data would be available with respect to Step II of the Primary Filing, which rate change would be implemented no sooner than December 31, 1986.

7. The parties should not be required to go forward with Step II of the Primary Filing, in the interests of administrative efficiency.

8. Step II of the Primary Filing should be dismissed.

9. The Commission has enunciated a standard through prior Commission case law prohibiting inclusion of test year-end CWIP in plant-in-service.

10. The costs associated with River Bend set forth in the Primary Filing cannot be considered known and measurable since they are estimated costs.

11. The Primary Filing blends test year data and post test year estimates resulting in a mismatching of revenues, expenses and investment levels.

12. The parties should only be required to go forward with the Alternate Filing, in the interests of administrative efficiency.

13. The Primary Filing should be dismissed.

B. Conclusions of Law

1. The Commission has jurisdiction over the matters considered herein pursuant to Sections 16(a), 17(e), 37 and 43 of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985).

2. GSU is a public utility as defined in PURA Section 3(c)(1).

3. Notice of Commission proceedings in this case was properly given in accordance with P.U.C. PROC. R. 21.22(a).

4. It is proper to dismiss Step II of the Primary Filing as an obsolete petition pursuant to P.U.C. PROC. R. 21.82(a)(2).

5. Estimated expenses associated with generating plant not in commercial operation at test year end are not known and measurable within the meaning of P.U.C. SUBST. R. 23.21(b).

6. The Primary Filing contravenes the rule enunciated through Commission case law that inclusion of test year-end CWIP in plant-in-service is prohibited.

7. GSU's Primary Filing violates the regulatory matching principle.

-continued-

8. The factual admissions of GSU contained in its petition constitute a sufficient factual predicate to permit dismissal of the Primary Filing.

Respectfully submitted,

Elizabeth Drews
Elizabeth Drews
Administrative Law Judge

APPROVED on this the 15th day of November 1985.

Phillip Holder
for RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

tv

DOCKET NOS. 6477 and 6525

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	* * * * * * *	PUBLIC UTILITY COMMISSION OF TEXAS

PROPOSED
ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that in accordance with applicable statutes an administrative law judge prepared and filed a Proposal for Decision respecting a motion to dismiss containing Findings of Fact and Conclusions of Law, which Proposal for Decision is ADOPTED and made a part hereof. The Commission further issues the following Order:

1. Official notice is taken of the current Commission-prescribed rate filing package form for Class A and B electric utilities.

2. The Primary Filing portion of the application cited above is DISMISSED.

3. Except as expressly granted herein the Office of Public Utility Counsel's motion to dismiss is DENIED.

4. This order is effective on the date of signing.

SIGNED AT AUSTIN, TEXAS on this the _____ day of November 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

tv

DOCKET NOS. 6477 and 6525

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	*	PUBLIC UTILITY COMMISSION
	*	OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	*	

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that in accordance with applicable statutes an administrative law judge prepared and filed a Proposal for Decision respecting a motion to dismiss containing Findings of Fact and Conclusions of Law, which Proposal for Decision is ADOPTED with the following modifications, and made a part hereof.

a. The discussion contained in Section II. B. of the Proposal for Decision is not adopted.

b. Finding of Fact Nos. 6 through 8 and Conclusion of Law No. 4 are not adopted.

The Commission further issues the following Order:

1. Official notice is taken of the current Commission-prescribed rate filing package form for Class A and B electric utilities.

2. The Primary Filing portion of the application cited above is DISMISSED.

3. Except as expressly granted herein the Office of Public Utility Counsel's motion to dismiss is DENIED.

-continued-

4. This order is effective on the date of signing.

SIGNED AT AUSTIN, TEXAS on this the 3rd day of December 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

tv

DOCKET NOS. 6477 AND 6525

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas considered motions for rehearing of the Order it rendered in these dockets on December 2, 1985, ruling on the Office of Public Utility Counsel's (OPC) Motion to Dismiss, and finds that such motions do not state grounds meriting revision of such Order. The Commission issues the following Order:

1. The motions for rehearing filed by Gulf States Utilities Company and OPC concerning the Commission's December 2, 1985, Order in these dockets are in all respects DENIED for lack of merit.

2. This Order is effective on the date of signing.

SIGNED AT AUSTIN, TEXAS on this the 8th day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Peggy Rosson
PEGGY ROSSON

SIGNED: Dennis L. Thomas
DENNIS L. THOMAS

SIGNED: Jo Campbell
JO CAMPBELL

ATTEST:

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

ml

CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL. APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDING OF THE CITY OF ORANGE, ET AL. APPEAL OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDINGS OF THE CITY OF LUMBERTON	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas considered motions for rehearing of the Final Order it rendered in these dockets on October 15, 1986. Such motions for rehearing were filed by Gulf States Utilities Company (GSU), the Treasurer of the State of Texas, the Texas State Agencies, certain cities (the Cities) and the Office of Public Utility Counsel. The Commission also considered GSU's motion requesting the Commission to deem GSU's response to motions for rehearing filed on time. Based upon such consideration the Commission issues the following Order:

1. The Cities' request that Conclusion of Law No. 27 be deleted is GRANTED. Conclusion of Law No. 27 is DELETED.

2. The Cities' request that Finding of Fact No. 71 be amended is GRANTED IN PART. The following language is ADDED to Finding of Fact No. 71:

> By entering into the Southern Contracts, GSU agreed to buy both energy and capacity and to make both payments for capacity and payments for energy. The decision to make the capacity payments in question was imprudent; and GSU's capacity payments to Southern are unreasonable and unnecessary. Considering the circumstances existing at the time GSU signed the Southern Contracts, the decision to make the payments for energy contained in the Contracts was not imprudent.

3. Except to the extent indicated above, all motions for rehearing filed concerning the Commission's final Order in these dockets are in all respects DENIED for lack of merit.

4. GSU's motion requesting the Commission to deem GSU's response to motions for rehearing filed on time is GRANTED.

5. This Order is effective on the date of signing.

SIGNED AT AUSTIN, TEXAS on this the 26th day of November 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

I respectfully dissent from the majority's decision concerning motions for rehearing regarding the Southern Contracts. I would rule on such motions in a manner consistent with my original dissent in the Final Order in this case.

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
PHILLIP A. HOLDER
SECRETARY OF THE COMMISSION

sb

CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

RECEIVED
1996 OCT 15 PM 2:15
PUBLIC UTILITY COMMISSION

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY

APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES

APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL.

APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDING OF THE CITY OF ORANGE, ET AL.

APPEAL OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDINGS OF THE CITY OF LUMBERTON

PUBLIC UTILITY COMMISSION

OF TEXAS

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled inquiry, application and appeals were processed in accordance with applicable statutes by an examiner who prepared and filed an Examiner's Report containing Findings of Fact and Conclusions of Law, which Examiner's Report as revised by the examiner is ADOPTED with the following modifications, and made a part hereof.

a. Finding of Fact No. 50 is AMENDED to read as follows:

50. As described in Section IV.C.1.c.ii. of the Examiner's Report, in making its decisions to purchase Southern power, GSU failed to use its most recent load forecast and failed to consider up-to-date information indicating the possibility that its load would be significantly lower than forecasted.

b. Finding of Fact No. 51 is AMENDED to read as follows:

51. As indicated by the problems discussed in Finding of Fact No. 43 above relating to discovery, and by evidence discussed in Section IV.C.1.c.ii. of the Examiner's Report, GSU did not rely on the studies discussed in Mr. McWhinney's rebuttal testimony and described in Section IV.C.1.c.ii. in making its decisions to purchase Southern power.

c. Finding of Fact No. 52 is AMENDED to read as follows:

52. For the reasons discussed in Section IV.C.1.c.ii. of the Examiner's Report, GSU knew or should have known at the time it committed to the purchases that the power from Southern would not be needed to meet GSU's capacity needs.

d. Finding of Fact No. 53 is AMENDED to read as follows:

53. As described in Section IV.C.1.d. and subsections thereunder of the Examiner's Report, GSU failed to consider or properly analyze alternatives to the Southern purchases. Such failure constitutes imprudent action on GSU's part.

e. Finding of Fact No. 54 is AMENDED to read as follows:

54. As described in Section IV.C.1.d.i. of the Examiner's Report, the evidence indicates that load management techniques or cogeneration, in combination with other alternatives, might have substituted for the Southern Contracts at less cost or risk, but GSU failed to consider or properly analyze this option in making its decisions to purchase the Southern power. Such failure constitutes imprudent action on GSU's part.

f. Finding of Fact No. 57 is AMENDED to read as follows:

57. As discussed in Section IV.C.1.d.ii. of the Examiner's Report, the evidence indicates that the problem identified in Finding of Fact No. 56 would have eliminated the alternative of replacing all Exxon contract gas generation with other gas generation only for a year or two after the Exxon contract expired. This problem did not justify signing the long-term Southern Contracts.

g. Finding of Fact No. 60 is AMENDED to read as follows:

60. As discussed in Section IV.C.1.d.ii. of the Examiner's Report, GSU should have considered, but failed to consider, sensitivity and risk analyses reflecting the effect of variations in fuel prices from those forecasted on the advisability of purchasing Southern power. Such failure constitutes imprudent action on GSU's part.

h. Finding of Fact No. 61 is AMENDED to read as follows:

61. As discussed in Section IV.C.1.d.iii. of the Examiner's Report, GSU failed to appropriately evaluate the alternatives of purchasing Southern power and deferring River Bend, which constitutes imprudent action on GSU's part. GSU failed to show that the Southern purchases were needed for capacity reasons as a result of the deferral of River Bend.

i. Finding of Fact No. 62 is AMENDED to read as follows:

62. As discussed in Section IV.C.1.d.iii. of the Examiner's Report, the less than two year deferral of the River Bend plant did not justify entering into the long-term Southern Contracts.

j. Finding of Fact No. 63 is AMENDED to read as follows:

63. As discussed in Section IV.C.1.d.iv. of the Examiner's Report and subsections thereof, the deferral until 1990 of Nelson 5 occurred in June 1982, instead of late 1981, and concerns as to GSU's financial condition did not play a significant role in the decision to defer that unit.

k. Finding of Fact No. 64 is AMENDED to read as follows:

64. As discussed in Section IV.C.1.d.iv. of the Examiner's Report, the evidence indicates that Nelson 5 would have met the same capacity and fuel diversification needs as the Southern purchases, would have offered GSU greater planning flexibility and might have been less costly. Under these circumstances, GSU's decision to enter the Southern Contracts without appropriately exploring the Nelson 5 alternative was imprudent.

l. Finding of Fact No. 65 is AMENDED to read as follows:

65. As discussed in Section IV.C.1.d.iv. of the Examiner's Report, GSU failed to show that it should have entered into the Southern purchases instead of constructing Nelson 5 and GSU failed to appropriately evaluate the alternative of not deferring Nelson 5. GSU's failure to appropriately evaluate the alternative of not deferring Nelson 5 constitutes imprudent action on GSU's part.

m. Finding of Fact No. 66 is AMENDED to read as follows:

66. As discussed in Section IV.C.1.d.v. of the Examiner's Report, GSU failed to make reasonable efforts to identify and negotiate with suppliers of purchased power other than Southern. Such failure constitutes imprudent action on GSU's part. GSU failed to show that it could not have obtained purchased power under more favorable terms from suppliers other than Southern.

n. Finding of Fact No. 67 is AMENDED to read as follows:

67. As discussed in Section IV.C.1. of the Examiner's Report and subsections thereof, GSU did not need any of the capacity it obtained under the Southern Contracts and did not appropriately evaluate the desirability of entering into such contractual commitments versus other alternatives, and its decisions to enter into such commitments were not prudent.

o. Finding of Fact No. 68 is AMENDED to read as follows:

68. For reasons discussed in Sections IV.C.1. and IV.C.2. of the Examiner's Report and subsections thereof, GSU's decision to agree to the May 12, 1982, amendments to the Southern Contracts was not a prudent one.

p. Finding of Fact No. 70 is AMENDED to read as follows:

70. As discussed in Section IV.E.2. of the Examiner's Report, GSU's decisions to incur the capacity costs pursuant to the Southern Contracts were not prudent.

q. Finding of Fact No. 73 is AMENDED to read as follows:

73. As described in Section V.B.2. of the Examiner's Report, GSU failed to show that the April 1986 fuel cost overrecovery refund was in compliance with the fuel rule in effect at that time. It is reasonable to require that the differences between the amounts of the April 1986 refund allocated to each customer class pursuant to the methodology GSU used to make the refund and that prescribed in the rule be carried forward to GSU's next refund or reconciliation proceeding. Such differences in customer class refund amounts should be quantified in that proceeding.

r. Finding of Fact No. 76 is ADDED to read as follows:

76. As discussed in Section IV.C.1.a. of the Examiner's Report and subsections thereof, GSU was imprudent in its failure to seek more favorable terms when it was negotiating with Southern to purchase the 1,000 MW of Southern power.

s. Conclusion of Law No. 13 is AMENDED to read as follows:

13. The treatment prescribed herein with respect to fuel cost overrecovery refunds and the United Gas refund is in compliance with the Commission's rules and other applicable law.

t. Conclusion of Law No. 23 is AMENDED to read as follows:

23. The Commission has not been preempted from finding GSU imprudent on the grounds that it should have negotiated more favorable terms in the Southern Contracts.

u. Conclusion of Law No. 24 is DELETED as unnecessary to the Commission's decision in this case.

v. Conclusion of Law No. 28 is AMENDED to read as follows:

28. GSU failed to meet its burden of proof to show that any portion of the capacity component of its Southern Contracts purchased power costs is reasonable, necessary to provide service to the public and in the public interest as required by PURA Section 39(a) and 41(c)(3)(D) and P.U.C. SUBST. R. 23.21(b) and (b)(2)(J). That component of GSU's purchased power expense does not meet these legal requirements.

w. Conclusion of Law No. 32 is ADDED to read as follows:

32. GSU's decisions to enter into the Southern purchases were imprudent.

The Commission further issues the following Order:

1. The application of Gulf States Utilities Company (GSU) and the final relief sought by the other participants in this case are hereby GRANTED to the extent recommended in the Examiner's Report as revised by the examiner and as modified by this Order.

2. Within 20 days after the date of this Order, GSU shall file with the Commission five copies of all pertinent tariff sheets incorporating the recommendations in the Examiner's Report as revised by the examiner and as modified by this Order, and shall serve one copy upon each party of record. No later than 10 days after the date of the tariff filing by GSU, parties shall file any objections to the tariff proposal and the general counsel shall file the staff's comments recommending approval or rejection of the individual sheets of the tariff proposal. No later than 15 days after the date of the tariff filing by GSU, all parties and the general counsel shall file in writing any responses to the previously filed comments of other parties. The Hearings Division shall by letter approve, modify, or reject each tariff sheet, effective the date of the letter, based upon the materials submitted to the Commission under the procedure established herein. The tariff sheets shall be deemed approved and shall become effective upon expiration of 20 days after the date of filing, in the absence of written notification of approval, modification, or rejection by the Hearings Division. In the event that any sheets are rejected, GSU shall file proposed revisions of those sheets in accordance with the Hearings Division letter within 10 days after the date of that letter, with the review procedures set out above again to apply. Copies of all filings and of the Hearings Division letter(s) under this procedure shall be served on all parties of record and the general counsel.

3. The approved rates shall be charged only for service rendered in areas over which this Commission was exercising its original or appellate jurisdiction as of the adjournment of the hearing on the merits herein, and said rates may be charged only for service rendered after the tariff approval date.

4. GSU shall incorporate into its fuel cost overrecovery/underrecovery balance that portion of the November 1985 refund amount not yet distributed to its customers. This sum shall be used to offset any fuel cost underrecoveries or shall be used to become part of the next refund GSU implements.

5. GSU shall make the appropriate accounting entries to reflect that the undisbursed balance of the United Gas refund is part of the $80 million rate reduction implemented pursuant to the stipulation of the parties in this case.

6. The difference between the amount of GSU's April 1986 fuel cost overrecovery refund allocated to each customer class pursuant to the methodology GSU used to make the refund, and that prescribed in P.U.C. SUBST. R. 23.23(b)(2) in effect in April 1986, shall be carried forward to GSU's next fuel refund or reconciliation proceeding. Such differences in customer class refund amounts shall be quantified in that proceeding. As a result of that proceeding, a mechanism shall be established whereby such amounts can be appropriately reallocated among GSU's customer classes. In that proceeding, GSU shall propose quantification of such figures and a mechanism which GSU considers to be in compliance with Paragraph 6 of this Order.

7. The Commission's findings concerning GSU's imprudence with respect to the Southern Contracts shall be res judicata with respect to the matters addressed by such findings.

8. This Order is deemed effective on the date of signing.

9. All pending motions, applications, and requests for entry of specific Findings of Fact and Conclusions of Law, for official notice or admission into evidence of late-filed exhibits, and any other requests for relief, general or specific, if not expressly granted herein are DENIED for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 15th day of October 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: Dennis L. Thomas
DENNIS L. THOMAS

I concur, with one exception. I dissented from the Commission's vote to reverse examiner's Order No. 21 in this case. Consistent with that dissent, I would grant the State Treasurer's Exception No. 4. I am convinced that under the Commission's rules as they existed at the time of the November 1985 fuel cost overrecovery refund, and for the reasons expressed in Order No. 21, the Unclaimed Property Law applies to that portion of the November 1985 refund which has not been claimed by GSU's customers.

SIGNED: Peggy Rosson
PEGGY ROSSON

I respectfully dissent from the majority's findings and conclusions regarding the Southern Contracts. The Court has held that a utility is entitled to sufficient revenues to recover proper operating expenses incurred through efficient operations. Railroad Commission v. High Plains Natural Gas Co., 613 S.W. 2d 46 (Tex. Civ. App.- Austin 1981, writ ref'd n.r.e.) per curiam 628 S.W. 2d 753 (Tex. 1981). No one disputes that the Southern Contracts involve the wholesale purchase and sale of electricity in interstate commerce. Clearly, the Federal Power Act, 16 U.S.C. §§ 824-824K preempts state regulation of such sales. Under the "filed rate doctrine" enunciated by the Court in Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246 (1951), the rate and terms of a contract on file and accepted by the Federal Energy Regulatory Commission (FERC) as just and reasonable cannot be relitigated in a different forum.

Therefore, the only questions before this Commission are whether Gulf States needed the purchased power to maintain its system reliability at the time it entered into the contracts; if so, whether there were less expensive alternative sources by which it could have met its system needs; and whether Gulf States has diligently pursued its remedies to modify the contracts in the face of changing circumstances. The great weight of the evidence shows that Gulf States needed the power to maintain its system reliability. In fact, shortly after Gulf States entered into the contracts, and without the benefit of hindsight, this Commission so found in its order in Docket No. 4501 entered on August 23, 1982. It is not surprising that the Commision made such a finding in 1982 since Gulf States had experienced "rolling-brown-outs" earlier and the Commission staff was urging Gulf States to act to improve its system reliability because its load forecasts were showing that the reliability problem would not abate. The majority in this instance even acknowledges that Gulf States needed the power at the time it entered into the contracts. The Examiner states in the proposal for decision: "Most of the analysis focused on the purchases from Southern as formulated in the contracts. Considering the evidence as a whole, however, in light of circumstances existing at the time, such as uncertainties as to the relative fuel costs and load growth and the apparent desirability of obtaining energy from a coal plant as a hedge against possible very large escalations in gas prices and the unlikely (sic) event of a gas supply shortage, the examiner believes that GSU would have been prudent to purchase such energy." This statement, adopted by the majority and incorporated in its Finding of Fact 71 is internally inconsistent with its finding that Gulf States acted imprudently by entering into the Southern Contracts. Obviously, it is the terms of the contract dealing with capacity payments the majority finds unreasonable. Yet, FERC, the regulatory body having jurisdiction over this purchase, has found the contract, including those terms, to be just and reasonable. Certainly, there is no evidence which shows that Gulf States could have contracted to purchase the energy without the capacity.

Furthermore, on July 14, 1984, in Docket 5560, this Commission found that the Southern Contracts would provide significant savings for Gulf States' customers in 1984 and 1985. It is incongruous that one year later, when such savings for the customers no longer exist because of changed circumstances, that the majority finds that Gulf States acted imprudently by entering into the contracts in 1982.

Not a scintilla of affirmative evidence exists in this record showing a less expensive alternative source available to Gulf States which would have met its reliability needs at the time it entered into the Southern Contracts. Speculation about what Gulf States might have done over the short-term so that it could take advantage of today's gas prices does not provide probative evidence upon which to base a finding of imprudence. The law, then and now, requires Gulf States to take action so as to insure reliable service to its customers in the future. One wonders what finding of imprudence the majority would have made had Gulf States foregone the Southern Contracts and its load growth and gas prices had escalated as then predicted. No utility can be expected to have a crystal ball that will accurately foresee the future.

Particularly troubling is the majority's refusal to acknowledge Gulf States' Form 10-K, filed with the Securities and Exchange Commission, which shows that the construction of Nelson 5 and River Bend were delayed because of financial constraints. This evidence purportedly is being ignored, even though admitted, as a discovery sanction, because, but for Gulf States' error in discovery, the intervenors might have developed a different theory of the case. Yet, this Commission has an affirmative duty to set just and reasonable rates, unlike a Court where either the Plantiff or Defendant wins the lawsuit.

As the Examiner notes, the record is simply not developed sufficiently to make a determination as to whether Gulf States in the face of changing circumstances diligently pursued its remedies to modify the Southern Contracts. As a utility imbued with the public interest, it had a duty to do so. As noted above, FERC has continuing jurisdiction to determine the reasonableness of the contract terms. I would remand the case to the Examiner to determine whether Gulf States sought timely relief from FERC regarding modification or elimination of the capacity payments now required under the Southern Contracts, since such contract terms appear onerous under today's circumstances.

Policy reasons should give the Commission pause about its decision. It is common knowledge that Gulf States now stands on the brink of bankruptcy, earning a negative cash return to equity. Its bonds have been rated at below investment grade. This Commission has a duty to balance both consumer and shareholder interests; consumer interests must include both the short-term interests in lower rates against the long-term interests in having reliable electric service. Any short-term rate relief consumers will experience today

may be more than off-set by the higher interest costs they will have to pay in the future because of the downgrading of Gulf States' bonds. Electric reliability is one of the more important infrastructures of the state. Certainly, attracting industry into Gulf States' service area so as to provide for much needed jobs will not be made easier by having a financially impaired utility serving the area.

SIGNED: Jo Campbell
JO CAMPBELL

ATTEST:

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

bdb

CONSOLIDATED DOCKET NOS. 6477, 6525, 6660, 6748 and 6842

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	PUBLIC UTILITY COMMISSION OF TEXAS
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	
APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES, ET AL.	
APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDING OF THE CITY OF ORANGE, ET AL.	
APPEAL OF GULF STATES UTILITIES COMPANY FROM THE RATEMAKING PROCEEDINGS OF THE CITY OF LUMBERTON	

ORDER

In public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that the above styled inquiry, application and appeals were processed in accordance with applicable statutes by an examiner who prepared and filed a Proposal for Decision Concerning Parties' Stipulation of Majority of Issues in Case (Proposal for Decision) containing Findings of Fact and Conclusions of Law, which Proposal for Decision, with the following modifications, is ADOPTED and made a part hereof.

a. Finding of Fact No. 48 is amended to read as follows:

> 48. Although the hearing on the merits in this case has not been completed, all parties to these proceedings have been afforded an opportunity for a hearing concerning those issues resolved in the Stipulation.

b. Finding of Fact No. 49 is added to read as follows:

> 49. The Stipulation is intended to resolve only those issues that are expressly covered by its terms. The Commission's approval of the Stipulation shall have no effect on (1) the State Agencies' challenges to Emergency Rule 23.23, currently pending before the Commission and the Travis County District Court, 345th Judicial District, and (2) the State Treasurer's challenge to the Commission ruling that the unclaimed property statute does not apply to unclaimed fuel refund checks or to the ultimate distribution of those funds.

c. The revisions to Stipulation Exhibits C and G proposed by general counsel in the memorandum attached as Appendix A to this Order are adopted. These revisions are typographical in nature and do not modify the agreement reached by the parties.

d. The revisions to the Proposal for Decision proposed by the examiner in the memorandum attached as Appendix B to this Order are adopted. These revisions are typographical in nature and do not modify the examiner's substantive recommendations.

The Commission further issues the following Order:

1. The application of Gulf States Utilities Company (Gulf States) and the final relief sought by the other participants in this case are hereby GRANTED to the extent recommended in the Proposal for Decision.

2. The Stipulation attached as Appendix A to the Proposal for Decision (Stipulation) is hereby APPROVED. Gulf States shall comply with the terms of the Stipulation as discussed in the Proposal for Decision.

3. The proposed tariff which constitutes Stipulation Exhibit C is hereby APPROVED effective the date of this Order. The rates set forth in the tariff shall be effective for service on and after the date of this Order in areas in which the Commission is exercising its original or appellate jurisdiction or original and appellate jurisdiction in this case.

4. Gulf States shall use the depreciation rates set forth in Stipulation Exhibit E, until further order of this Commission.

5. Gulf States shall make refunds to its customers in the cities listed in Stipulation Exhibit F in the manner set forth in Article III of the Stipulation.

6. Gulf States shall carefully evaluate its activities relating to Cajun Electric Power Cooperative's actions concerning the Big Cajun power plants in the manner set forth in Article IV of the Stipulation, and shall file testimony in its next general rate case which addresses its efforts in this regard.

7. The Commission hereby orders that Gulf States defer those costs (including Operation & Maintenance, insurance, fuel savings and carrying costs on Construction Work in Progress not currently included in rate base) which have been capitalized with respect to River Bend Unit I during its construction, as well as the buybacks of capacity (which includes capacity and operating costs) from Cajun Electric Power Cooperative, Inc., including fuel savings related thereto, (hereafter referred to as "the Cajun buyback payment") effective with the commercial in-service

date of this unit as defined by the Commission; provided, however, that the amount to be deferred with respect to the capacity and operating costs but excluding fuel costs of the Cajun buyback payment for the first twelve months thereof on a Texas retail basis shall not exceed the amounts actually paid to Cajun during that period or $106,557,000, whichever is smaller. Such deferrals shall also include the decommissioning costs, depreciation expense and amortization of Contra AFUDC which would otherwise be recorded on the unit and full income tax normalization to properly reflect the above items. The deferral of these costs and the accrual of carrying costs thereon should continue until such time as the effective date of the rates approved in the rate case to be filed following the date on which River Bend Unit I is placed in-service for ratemaking purposes. The carrying costs described above shall be accrued at Gulf States' overall net AFUDC rate calculated in accordance with prescribed federal regulatory guidelines.

The recovery of all deferred costs will be included in the rate case at the time the unit is placed in-service for ratemaking purposes. However, the Commission reserves the right to exclude from rate base or other recovery any portion of the expenditures for the plant, AFUDC, capitalized expenses, capitalized depreciation, capitalized carrying costs or other capitalized costs which the Commission determines to be related to plant that is not used and useful or to have been imprudently spent or incurred. The Commission further expressly reserves the right to exclude from rate base or other recovery any portion of the deferred capacity payments resulting from the Cajun buyback which are determined to be unreasonable or unnecessary and, in such connection, the Commission reserves the right to consider whether such deferred capacity payments can and should be reduced, pro rata, for recovery purposes to the same extent that the Commission excludes from rate base or other recovery the amounts described in the preceding sentence. Further, the parties to the rate case described above may urge any other argument they may have regarding the inclusion or exclusion of the expenses of the Cajun buyback in cost of service. The Commission further reserves the right to consider, and all parties to the rate case described above shall have the right to raise, the reasonableness, prudence and appropriate regulatory treatment of any deferred expenses in the rate case in which rate base treatment for plant is requested.

8. In its plant in service case for River Bend Unit 1, Gulf States shall propose a rate moderation plan designed to defer the

recognition in rates of a portion of River Bend's costs from the early years until the later years of operation.

9. Gulf States shall pay the expenses of the Public Parties Committee and the cities in the manner set forth in Articles VIII and X of the Stipulation.

10. Gulf States shall cooperate with the intervenor cities in their audit of Gulf States' AFUDC accounting methodologies in the manner set forth in Article XVIII of the Stipulation.

11. This Order is final only as to those matters resolved by the Stipulation. The hearing on the merits in the above styled dockets will continue in the manner and for the purposes set forth in the Proposal for Decision, and will culminate in a final order of the Commission in these dockets concerning those issues not resolved in the Stipulation.

12. This Order is deemed effective on the date of signing.

13. All motions, applications, and requests for entry of specific findings of fact and conclusions of law and any other requests for relief, general or specific, if not expressly granted herein or reserved for subsequent proceedings in these dockets in the manner provided in the Proposal for Decision are DENIED for want of merit.

SIGNED AT AUSTIN, TEXAS on this the 25th day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED: _____
PEGGY ROSSON

SIGNED: _____
DENNIS L. THOMAS

I dissent regarding the adoption of Article VIII of the Stipulation. Unless properly modified, it is unlawful, as reflected in my comments at the open meeting.

SIGNED: _____
JO CAMPBELL

ATTEST:

_____
for RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

mg

ORDER APPENDIX A

Public Utility Commission of Texas
7800 Shoal Creek Boulevard · Suite 400N
Austin, Texas 78757 · 512/458-0100

JUN 25 PM 2:11

June 25, 1986

The Honorable Elizabeth Drews
Administrative Law Judge
Hearings Division
7800 Shoal Creek Blvd., 400N
Austin, TX 78757

RE: GSU - Docket No. 6525 et al - Stipulation

Dear Ms. Drews:

In a final review of the Stipulation I noticed two typographical errors. These errors in no way affect the substance of the Stipulation. The errors appear in Stipulation Exhibit C and Stipulation Exhibit G.

In Stipulation Exhibit C (the Tariff, Section III, Sheet No. 2, Revision 9, page 1 of 1, attached) reference is made to "Schedule FF, Sheet No. 41." As Mr. Cecil Johnson, attorney for GSU confirmed at the June 25, 1986 Final Order Meeting, the reference should be to "Schedule FF, Sheet No. 48."

In Stipulation Exhibit G, under the column labeled "Total Electric" on the line entitled "Return", the amount $207,199,830 is noted. The proper return amount is $270,199,830. The correct amount can be confirmed by referring to Stipulation Exhibit D, on the line for "Return". (There is a one dollar difference between the Return amount shown in Exhibit D and the Return amount shown in Exhibit G; the difference is due to rounding). Additionally, the sum of the amounts noted under the column labeled "Total Electric" is $1,430,500,430 when a return amount of $270,199,830 is used, thereby reconfirming that $270,199,830 is the correct amount.

I request that the proper corrections be made and incorporated into the record as you may deem appropriate. I would emphasize that these corrections in no way modify the Stipulation.

Thank you for your consideration of this matter.

Respectfully submitted,

Alfred R. Herrera
Staff Attorney

ld

Attachments

cc: All parties of record

GULF STATES UTILITIES CO.
Electric Service
Texas

SECTION NO.: III
SECTION TITLE: Rate Schedule and Charges
SHEET NO.: 2
EFFECTIVE DATE: Proposed
REVISION: 9
APPLICABLE: Entire Texas Service Area
PAGE: 1 of 1

SCHEDULE RS

INTERIM RATE
RESIDENTIAL SERVICE | T

I. Applicability

This rate is applicable under the regular terms and conditions of the Company for all domestic purposes in single family residences or individual apartments. This rate is not applicable to service for common facilities at apartments and other multi-dwelling units. Service will be single-phase except that three-phase service may be rendered hereunder, at Company's option, where such service is available. Where a customer has more than one meter, each meter shall be billed separately. Resale, breakdown, standby, or auxiliary service is not applicable hereunder.

II. Monthly Bill

A. Customer Charge — $7.00 per month | R | C

B. Energy Charge

All KWH Used — 3.973¢/KWH* | R

Except that in the Billing Months of November through April, all KWH used in excess of 1,000 KWH will be billed at 1.973¢/KWH*. | T, R

*Plus fixed fuel factor per Schedule FF, Sheet No. 41.

C. Minimum Charge

The Minimum Monthly Charge will be the Customer Charge.

Supersedes RS (5-28-86)

From Exhibit C

STIPULATION EXHIBIT D

Public Utility Commission of Texas
Gulf States Utilities - Docket 6525
Invested Capital and Return

	AS ADJUSTED	
	TOTAL ELECTRIC	TEXAS RETAIL
PLANT IN SERVICE	$3,061,270,788	$1,245,338,563
ACCUMULATED DEPRECIATION	949,416,423	390,592,319
NET PLANT	$2,111,854,365	$ 854,746,244
CWIP IN RATE BASE	298,963,529	125,921,483
PROPERTY HELD FOR FUTURE USE	61,952,335	25,967,486
WORKING CAPITAL ALLOWANCE	8,171,691	3,036,924
MATERIALS AND SUPPLIES	12,279,826	5,626,558
PREPAYMENTS	7,609,352	3,097,758
FUEL INVENTORY	24,857,174	10,335,780
LESS		
DEFERRED TAXES	324,802,345	134,213,092
PRE-1971 INVESTMENT TAX CREDITS	5,136,552	2,091,029
CUSTOMER DEPOSITS	14,177,576	5,484,304
PROPERTY INSURANCE RESERVE	2,315,121	1,205,249
INJURIES AND DAMAGES RESERVE	1,470,503	675,160
OTHER COST FREE CAPITAL	12,723,429	5,425,623
TOTAL INVESTED CAPITAL	$2,165,062,746	$ 879,637,776
Rate of Return	0.1248	0.1248
Return	$ 270,199,831	$ 109,778,794

STIPULATION EXHIBIT G

PUBLIC UTILITY COMMISSION OF TEXAS
GULF STATES UTILITIES COMPANY - DOCKET 6525
REVENUE REQUIREMENT

	AS ADJUSTED TOTAL ELECTRIC	AS ADJUSTED TEXAS RETAIL
NON-RECONCILABLE PURCHASED POWER	$92,883,669	$43,796,516
RECONCILABLE FUEL AND PURCHASED POWER	564,970,665	238,960,394
OPERATIONS AND MAINTENANCE	224,045,597	106,985,814
DEPRECIATION & AMORTIZATION	102,679,511	41,524,426
OTHER TAXES	60,753,488	29,268,425
INTEREST ON CUSTOMER DEPOSITS	1,033,545	399,806
STATE INCOME TAXES	4,225,824	0
FEDERAL INCOME TAXES	109,708,211	41,428,956
RETURN	207,199,830	109,778,794
REVENUE REQUIREMENT	$1,430,500,340	$612,143,131
LESS MISCELLANEOUS REVENUE		6,580,005
LESS INTERRUPTIBLE ADJUSTMENT		13,879,991
LESS FUEL REVENUE		238,960,394
BASE RATE REVENUE REQUIREMENT		$352,722,741
TEST YEAR ADJUSTED BASE RATE REVENUE		
BASE RATE REV. PER SCH. Q-1	$ 446,602,732	
LESS INTERRUPTIBLE ADJ.	$ 13,879,991	
TEST YEAR ADJUSTED BASE RATE REVENUE		$432,722,741
BASE RATE REVENUE DEFICIENCY		$(80,000,000)
RETAIL RECONCILABLE FUEL EXPENSE		$238,960,394
TEST YEAR FUEL REVENUE PER SCH Q-1		353,317,884
FUEL RELATED REVENUE DEFICIENCY		$(114,357,490)
TOTAL RETAIL REVENUE DEFICIENCY		$(194,357,490)

III. Description of the Company

GSU was incorporated under the laws of the State of Texas in 1925. It is headquartered in Beaumont, Texas.

GSU is an investor-owned electric utility engaged principally in generating electric energy and transmitting, distributing and retailing such energy. It provides electric utility service in a 28,000 square mile area in Southeastern Texas and South Central Louisiana which extends a distance of over 350 miles, from a point east of Baton Rouge, Louisiana, to about 50 miles east of Austin, Texas. GSU's service area includes the northern suburbs of Houston and such large cities as Conroe, Huntsville, Port Arthur, Orange and Beaumont, Texas, and Lake Charles and Baton Rouge, Louisiana. GSU also sells electricity to municipalities and rural electric cooperatives in both Texas and Louisiana. GSU provides electric utility service to more than 500,000 customers. During the test year, which ended March 31, 1985, GSU served approximately 275,260 Texas retail customers. During the test year, 51 percent of GSU's electric operating revenues was derived from within Louisiana, and 49 percent from within Texas.

GSU's only proposed generating unit actively under construction is River Bend Unit 1, a 940 megawatt (mw) boiling water nuclear unit being constructed near St. Francisville, Louisiana. GSU currently expects River Bend to be placed in service in June 1986. GSU has an installed capacity of 6692 mw, including its 70 percent ownership of River Bend. (Cajun Electric Power Cooperative (CEPCO) owns the other 30 percent.) Of this total, 5429 mw is gas-fired, 605 mw is western coal-fired and 658 mw represents GSU's share of River Bend. During the recent past, approximately 60 percent of GSU's system generation was provided by its gas-fired units, 15 percent by its western coal-fired units and 25 percent primarily by purchased power.

GSU's transmission system consists of a backbone 500 kilovolt (kv) system across South Louisiana into East Texas, with an underlying network of 230 and 138 kv lines. There is also a 345 kv system in the westernmost portion of GSU's service area. GSU is a member of the Southwest Power Pool.

In addition to its electric utility business, GSU produces and sells steam for industrial use, and it purchases and retails natural gas in the Baton Rouge, Louisiana, area. During the test year, 92 percent of GSU's operating revenue was derived from the electric utility business, 5 percent from the steam business and 3 percent from the gas business. The gas and steam products businesses are conducted entirely in Louisiana.

GSU has three wholly-owned subsidiaries: Prudential, Varibus and Finance. Prudential is engaged primarily in exploration, development and operation of oil and gas properties. Varibus operates intrastate gas pipelines in Louisiana primarily to serve GSU's generating stations. Varibus also holds lignite deposits in East Texas for possible use by GSU or sale to others. Finance is

Public Utility Commission of Texas

Memorandum

TO: Chairman Rosson
Commissioner Thomas
Commissioner Campbell
All Parties of Record
General Counsel

FROM: Elizabeth Drews Elizabeth Drews

DATE: June 24, 1986

SUBJECT: Proposal for Decision - Docket Nos. 6477, 6525, 6660, 6748 and 6842 - GSU

On Friday I issued in these dockets a Proposal for Decision Concerning Parties' Stipulation of Majority of Issues in Case, which you are scheduled to consider on Wednesday, June 25, 1986. There are two minor errors in the Proposal for Decision which should be corrected. First, a sentence was deleted from page 15 which explains what "CEPCO" stands for and the extent of that entity's ownership in River Bend. Second, on line 3 of page 19, "April 19, 1987" should read "April 1987". I do not expect anyone to object to these changes. Attached are revised pages. I apologize for any inconvenience these amendments might cause.

bdb

ratepayers from then until April 1987 would be only $30 million. (The examiner doubts that a final order in a GSU filed plant in service case will be in effect as early as April 1987. Even if GSU can file its plant in service case in October 1986, absent a settlement, the hearing in that case is likely to be lengthy. However, while this would affect the numbers, it would not affect the outcome of this part of Dr. Divine's analysis.)

B. Article III: Refunds to Customers in Certain Cities

Under Article III of the Stipulation, GSU would refund to its customers in sixteen cities the amount of base rates collected in each such city since a specified date which exceeded the base rate amount that would have been collected under the Stipulation. The sixteen cities are the fifteen cities whose rate reduction ordinances were the subject of GSU's appeals in Docket Nos. 6660, 6748 and 6842, as well as the City of West Orange. For the fifteen cities, the specified beginning dates for the refund period are the dates GSU and each city agreed to in their stipulations in Docket Nos. 6660, 6748 and 6842. Regarding West Orange, GSU witness William J. Jefferson testified:

> One City, the City of West Orange, adopted a Resolution regarding reduced rates instead of enacting an ordinance. Since that Resolution does not indicate any tariff filing date or any effective date, the Company has agreed, for settlement purposes only, to a date determined in essentially the same manner as the others. That method was to allow ten days, from the date an ordinance was adopted, for the tariff filing specified in the ordinance and then to assume, as some ordinances specified, that the lower rates would go into effect on the first day of the next monthly billing cycle.

The total amount to be refunded through May 31, 1986, in the sixteen cities is estimated to be $5,273,000. The cities would have the right to review the accuracy of GSU's calculations, confer with GSU personnel, and if necessary have a hearing concerning the amount of the refund. The refunds would be through a one-time bill credit based on historical usage during the refund period for each customer taking service at the time of the refund.

The State Agencies had asked GSU to estimate the unclaimed amount of the refunds which would be provided pursuant to Article III of the Stipulation. Mr. Jefferson testified that in light of the Article III refund methodology, there will be no unclaimed amounts. However, he noted that customers have left, or moved within, the GSU system during the relevant period. If this had not been true, those customers would have received refunds of approximately $337,000.

C. Article IV: Fuel

The Stipulation resolves some rate case issues pertaining to GSU's fuel costs, and defers others either until the fuel reconciliation hearing to be held