IN THE COURT OF APPEALS, THIRD SUPREME JUDICIAL DISTRICT

OF TEXAS, AT AUSTIN

NO. 14,647

GENERAL ELECTRIC CO.,

RELATOR

vs.

PUBLIC UTILITY COMMISSION OF TEXAS AND
ELIZABETH DREWS,

RESPONDENTS

ORDER ON ORIGINAL PROCEEDING

Relator's motion for leave to file original proceeding was this day submitted and granted. The cause has been docketed under the above number and style.

The cause has been set for submission and oral argument to the Court on February 12, 1986, at 8:30 a.m.

As this cause is now pending in this Court, the Court orders that no further proceedings be had or entertained in the pending matter and that the Commission and its agents provide complete protection from public disclosure of the materials made the basis for this proceeding, pending disposition of the cause in this Court.

Done this the 7th day of February, 1986, at 4:15 P.M., at Austin, Texas.

Bob Shannon

Bob Shannon, Chief Justice

[Before Chief Justice Shannon, Justices Smith and Gammage]

Filed: February 7, 1986

Docket Nos. 6477 and 6525

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

STIPULATED PROTECTIVE ORDER

Certain parties to this proceeding and the Commission Staff have sought to obtain certain documents and information from Gulf States Utilities Company (Gulf States) in this proceeding. Gulf States asserts that certain of the documents and information requested contain confidential and proprietary information. This Stipulated Protective Order is a device to facilitate and expedite the handling of this proceeding and it merely reflects agreement by counsel for the active participants at this point as to the manner in which "protected materials", as that term is defined in this Order, are to be treated. This action is not intended to constitute any agreement on the merits concerning the confidentiality of any protected materials.

1. All documents and information furnished subject to the terms of the Order hereinafter shall be referred to as "protected materials".

a. Protected materials shall include all documents and information shown on Attachment "A" to this Order.

b. Protected materials shall also include any other documents or information supplied by or obtained from Gulf States that by subsequent order in this proceeding is made subject to the terms of this Order.

c. However, protected materials shall not include any information or document contained in the public files of the Public Utility Commission of Texas, the Federal Energy Regulation Commission or any other federal or state agency. Protected materials also shall not include documents or information which at, or prior to, disclosure in these proceedings, is or was, public knowledge, or which becomes public knowledge other than through disclosure in violation of this Protective Order.

2. Protected materials will be made available only to a "reviewing party." A reviewing party is one stipulating in writing to this Protective Order and such other party which the Presiding Examiner shall by order make subject to this Protective Order.

3. Except as otherwise provided in this paragraph, a reviewing party shall be permitted access to protected materials only through its "authorized representatives." Authorized representatives of a reviewing party include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the reviewing party and directly engaged in these proceedings.

4. Each person, except counsel, who are signatories to

this Protective Order, who inspects the protected materials shall first agree in writing to the following certification:

> I certify my understanding that the protected materials are provided to me pursuant to the terms and restrictions of the Stipulated Protective Order in PUCT Docket Nos. 6477 and 6525, and that I have been given a copy of it and have read the Stipulated Protective Order and agree to be bound by it. I understand that the contents of the protected materials, and any notes, memoranda, or any other form of information regarding or derived from the protected materials, shall not be disclosed to any one other than in accordance with the Stipulated Protective Order and shall be used only for the purpose of the proceeding in PUCT Docket Nos. 6477 and 6525. I acknowledge that the obligations imposed by this certification are pursuant to an order of the Public Utility Commission of Texas. Provided, however, if the information contained in the protected materials is obtained from independent sources, the understanding stated herein shall not apply.

A copy of each signed certification shall be provided to counsel for Gulf States. Any authorized representative may disclose materials to any other person who is an authorized representative or is qualified to be an authorized representative provided that, if the person to whom disclosure is to be made has not executed and provided for delivery of a signed certification to Gulf States, that certification shall be executed prior to any disclosure. In the event that any person to whom such protected materials are disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. Any person who has agreed to the foregoing certification shall continue to be bound by the provision of this Stipulated Protective Order for the duration thereof, even if no longer so engaged.

5. Except for protected materials which are voluminous and specifically identified as protected on Attachment "A" hereto,

Gulf States shall provide a reviewing party one copy of the protected materials. A reviewing party may make further copies of reproduced materials for use in this proceeding pursuant to the Stipulated Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and the reviewing party shall promptly provide Gulf States with a copy of that record. Reviewing parties may take handwritten notes or derive other information from the protected materials provided in response to this Paragraph 5.

6. a. Protected materials that are specifically so identified on Attachment "A" hereto will be made available for inspection by reviewing parties at the offices of Gulf States Utilities Company in Beaumont, Texas, between the hours of 9:30 a.m. and 5:00 p.m., Monday through Friday (except holidays). Protected materials also will be made available at the office of Public Utility Counsel, 8140 Mopac, Westpark III, Suite 120, Austin, Texas. The protected materials may be reviewed only during the "reviewing period", which period shall commence upon issuance of the Stipulated Protective Order, and continue until conclusion of these proceedings. As used in this paragraph, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law.

b. Reviewing parties may take handwritten notes regarding the information contained in protected materials made available for inspection pursuant to Paragraph 6(a), or they may

make photographic or mechanical copies of the protected materials, provided, however, that before photographic or mechanical copies can be made, the reviewing party seeking photographic or mechanical copies must give written notice to counsel for Gulf States identifying each piece of protected material or portions thereof the party will need. Only one copy of the materials designated in the notice shall be reproduced. Reviewing parties shall make a diligent, good-faith effort to limit the amount of requested photographic or mechanical copying requested to only that which is essential for purposes of this proceeding. Notwithstanding the foregoing provisions of this Paragraph 6(b), a reviewing party may make further copies of reproduced materials for use in this proceeding pursuant to the Stipulated Protective Order, but a record shall be maintained as to the documents reproduced and the number of copies made, and the reviewing party shall promptly provide Gulf States with a copy of that record. Only that information which is necessary to this proceeding may be extracted from these materials.

7. All protected materials shall be made available to the reviewing parties solely for the purpose of these proceedings. The protected materials, as well as the reviewing parties' notes, memoranda, or other information regarding, or derived from the protected materials, are to be treated confidentially by the reviewing parties and shall not be disclosed or used by the reviewing party except as permitted and provided in this Stipulated Protective Order. Information derived from or

describing the protected materials shall not be placed in the public or general files of the reviewing parties except in accordance with provisions of this Stipulated Protective Order. A reviewing party must take all reasonable precautions to ensure that protected materials, including handwritten notes and analyses made from protected materials, are not viewed or taken by any person other than an authorized representative of the reviewing party.

8. a. If a reviewing party tenders for filing any written testimony, exhibit, brief, or other submission that includes, incorporates, or refers to protected materials, all portions thereof referring to such materials shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Stipulated Protective Order. Such documents shall be marked "PROTECTED MATERIAL" and shall be filed under seal with the Presiding Examiner and served under seal only upon Gulf States and the reviewing parties.

b. If any reviewing party desires to include, utilize, or refer to any protected materials in testimony or exhibits during the hearing in such a manner that might require disclosure of such material, such party shall first notify both counsel for Gulf States and the Presiding Examiner of such desire, identifying with particularity each of the protected materials. Unless objection to disclosure of such protected materials is waived by counsel for Gulf States, or in the event that the materials are no longer deemed to be protected materials as a result of completion

of the procedures set forth in Paragraph 11, any testimony or examination of witnesses concerning such protected materials, and all objections and arguments related thereto, shall be conducted in camera, closed to all parties except to the reviewing parties and any person described in Paragraph 3. That portion of the hearing transcript which refers to such material shall be sealed and subject to this Stipulated Protective Order. All protected materials which may be ultimately admitted into evidence shall be filed in sealed, confidential envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Stipulated Protective Order.

c. All protected materials filed with the Commission, the Presiding Examiner, any court, or any other judicial or administrative body in support of or as a part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers.

9. Each reviewing party to this Stipulated Protective Order reserves the right to seek changes in it as appropriate from the Presiding Examiner, the Commission, or the courts.

10. In the event that the Presiding Examiner at any time in the course of this proceeding finds that all or part of the protected materials are not confidential, those materials shall nevertheless be subject to the protection afforded by this Order for one (1) full working day, unless otherwise ordered, from the date of issuance of the Presiding Examiner's decision or the date of issuance of a final and non-appealable Commission order denying

an appeal filed within the one (1) full working day period from the Presiding Examiner's order. Neither Gulf States nor any reviewing party waives its right to seek additional administrative or judicial remedies after the Commission's denial of any appeal.

11. In the event that a reviewing party wishes to disclose protected material to any person to whom disclosure is not authorized by this Stipulated Protective Order, or wishes to object to the designation of certain information or material as protected material, such reviewing party shall first serve written notice of such proposed disclosure or objection upon counsel for Gulf States and the Presiding Examiner identifying with particularity each of such protected materials. The Examiner will determine whether the material is confidential. The burden is on Gulf States to show that such material is confidential. If the Examiner determines that such material is not confidential, disclosure may not be made earlier than one (1) full working day later, unless otherwise ordered.

No party waives any right to seek additional administrative or judicial remedies concerning such Examiner's ruling.

12. Nothing in this Order shall be construed as precluding Gulf States from objecting to the use of protected materials on grounds other than confidentiality, including the lack of required relevance. Nothing in this Order shall be construed as an agreement by any reviewing party that the protected materials are entitled to confidential treatment.

13. All notices, applications, responses or other

correspondence shall be made in a manner which protects the materials in issue from unauthorized disclosure.

14. Following the conclusion of these proceedings, as that term is defined in Paragraph 6(a), Gulf States will provide written notice to counsel for reviewing parties advising each reviewing party that it must, no later than 30 days following conclusion of these proceedings, return to Gulf States all copies of the protected materials provided by Gulf States pursuant to this Order and all copies reproduced by a reviewing party pursuant to Paragraphs 5 or 6(b), and that counsel for each reviewing party must provide to Gulf States a verified certification that, to the best of his or her knowledge, information, and belief, all copies of notes, memoranda, and other documents regarding or derived from the protected materials (including copies of protected material) have been destroyed, other than notes, memoranda, or other documents which contain information in a form which, if made public, would not cause disclosure of protected material.

Nothing in this paragraph shall prohibit each counsel for a reviewing party from retaining two copies of any filed testimony, brief, application for rehearing, or other pleading which refers to protected materials provided that any such materials retained by counsel shall remain subject to the provisions of this Stipulated Protective Order.

15. Notwithstanding any provision contained herein to the contrary, this Protective Order shall expire at the earlier of two (2) years from the date of issuance of the final Order in

these Docket Nos. 6477 and 6525 or three (3) years from the date of this Stipulated Protective Order unless such expiration date is extended by stipulation of the parties hereto or by the Commission upon Motion.

16. This agreement is subject to the requirements of the Open Records Act, the Open Meetings Act, and any other applicable law, provided further that parties subject to those acts will give Gulf States prior notice, if possible under those acts, prior to disclosure pursuant to those acts.

It is hereby Ordered that Gulf States shall make available, under the above terms and conditions, the documents furnished in response to Requests for Information listed on Attachment "A" and any subsequent amendments which may be approved.

Entered at Austin, Texas, on this _____ day of _____, 1985.

Public Utility Commission
of Texas

_____
Elizabeth Drews
Hearings Examiner

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 NO. 42

ORDER CONSOLIDATING CASES AND DISCUSSING PROCEEDINGS RELATING TO THE STIPULATION AND THE UNSTIPULATED ISSUES

I. Consolidation

On June 11, 1986, the parties filed a stipulation which would resolve many of the issues in the rate case as well as the appeals from municipal ratesetting proceedings relating to Gulf States Utilities Company (GSU). The stipulation would apply to all five dockets referred to above. All of the parties to Docket No. 6842 are parties to consolidated Docket Nos. 6477, 6525, 6660 and 6748. On June 12, 1986, at the hearing in the four consolidated dockets, Mr. Don Butler, representing the City of Lumberton for this purpose, moved to consolidate Docket No. 6842 with the four consolidated dockets. No one opposed this motion. The examiners find that the cases involve common questions of fact or law, and that litigating the two cases separately would result in expense or delay. The City of Lumberton's motion to consolidate is GRANTED.

II. Stipulation Proceedings

As discussed at the hearing, the hearing will reconvene at 10:00 a.m. on Wednesday, June 18, 1986, to allow the examiner to ask any remaining questions she might have relating to the stipulation, unless this proceeding is cancelled by the examiner. Interested parties are encouraged to contact the Commission in advance to determine if this proceeding has been cancelled. If it is cancelled, the hearing will reconvene as described in Part III of this Order.

III. Proceedings Relating to Disputed Issues

The hearing will reconvene at 10:00 a.m. on Monday, June 30, 1986, for the purpose of continuing taking evidence concerning issues still in dispute. Evidence relating to the Southern Companies contracts will be taken first, followed by evidence relating to fuel reconciliation.

DOCKET NOS. 6477, 6525, 6660 and 6748

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1986 JUN 11 PM 3:51
PUBLIC UTILITY COMMISSION
OF TEXAS

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.	§

ORDER NO. 41

ORDER CONCERNING CONSIDERATION OF STIPULATION

As indicated in Order No. 35, a proposed stipulation is being considered by the parties. On June 10, 1986, Gulf States Utilities Company (GSU) filed a motion for an additional extension in the testimony filing and hearing dates relating to the proposed stipulation. On June 11, 1986, general counsel filed a letter supporting the change in the testimony filing date but opposing a change in the hearing date. In order to ensure that all parties have a reasonable and sufficient period of time to prepare testimony in support of the stipulation, GSU's motion is hereby GRANTED in part, and the dates set forth in Order No. 40 are EXTENDED as set forth in this Order. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by 4:00 p.m. on Wednesday, June 11, 1986. The hearing will reconvene at 10:00 a.m. on Thursday, June 12, 1986, for the purpose of enabling any parties who wish to do so to express their positions concerning the settlement. If no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party which wishes to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. The examiner will consider at the hearing on June 12, 1986, any request to recess the hearing until June 13, 1986. Any party who wants information about or to negotiate concerning the proposed stipulation needs to contact the other parties as soon as possible. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary. Parties interested in the scheduling of proceedings are urged to stay in contact with the parties actively involved in the negotiations or the Commission to account for the possibility of last minute schedule changes.

SIGNED AT AUSTIN, TEXAS, on this the 11th day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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DOCKET NOS. 6477, 6525, 6660 and 6748

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.	§	

ORDER NO. 40

ORDER CONSIDERING CONSIDERATION OF STIPULATION

As indicated in Order No. 35, a proposed stipulation is being considered by the parties. On June 9, 1986, general counsel filed a motion for an additional extension in certain dates relating to the proposed stipulation. In order to ensure that all parties have a reasonable and sufficient period of time to negotiate, general counsel's motion is hereby GRANTED, and the dates set forth in Order No. 39 are EXTENDED as set forth in this Order. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by 4:00 p.m. on Tuesday, June 10, 1986. The hearing will reconvene at 10:00 a.m. on Thursday, June 12, 1986, for the purpose of enabling any parties who wish to do so to express their positions concerning the settlement. If no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party which wishes to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. Any party who wants information about or to negotiate concerning the proposed stipulation needs to contact the other parties as soon as possible. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary. Parties interested in the scheduling of proceedings are urged to stay in contact with the parties actively involved in the negotiations or the Commission to account for the possibility of last minute schedule changes.

SIGNED AT AUSTIN, TEXAS, on this the 9th day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

bdb

DOCKET NOS. 6477, 6525, 6660 and 6748

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.	§

ORDER NO. 39

ORDER CONSIDERING CONSIDERATION OF STIPULATION

As indicated in Order No. 35, a proposed stipulation is being considered by the parties. On June 4, 1986, general counsel filed a motion for an additional extension in certain dates relating to the proposed stipulation. In order to ensure that all parties have a reasonable and sufficient period of time to negotiate, general counsel's motion is hereby GRANTED, and the dates set forth in Order No. 38 are EXTENDED as set forth in this Order. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by 4:00 p.m. on Friday, June 6, 1986. The hearing will reconvene at 10:00 a.m. on Tuesday, June 10, 1986, for the purpose of enabling any parties who wish to do so to express their positions concerning the settlement. If no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party which wishes to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. Any party who wants information about or to negotiate concerning the proposed stipualtion needs to contact the other parties as soon as possible. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary. Parties interested in the scheduling of proceedings are urged to stay in contact with the parties actively involved in the negotiations or the Commission to account for the possibility of last minute schedule changes.

SIGNED AT AUSTIN, TEXAS, on this the 5th day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

bdb

BSR

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DOCKET NOS. 6477, 6525, 6660 and 6748

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.	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER NO. 38

ORDER CONCERNING CONSIDERATION OF STIPULATION

As indicated in Order No. 35, a proposed stipulation is being considered by the parties. The hearing reconvened on June 2, 1986. The parties indicated that it would be desirable to have additional time for negotiations. By oral order at the hearing, the dates set forth in Order No. 36 were extended. On June 3, 1986, general counsel filed a motion for an additional extension on behalf of the parties actively participating in the negotiations. In order to ensure that all parties have a reasonable and sufficient period of time to negotiate, general counsel's motion is hereby GRANTED, and the dates set forth in Order No. 36 are EXTENDED as set forth in this Order. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by 4:00 p.m. on Wednesday, June 4, 1986. The hearing will reconvene at 10:00 a.m. on Friday, June 6, 1986, for the purpose of enabling any parties who wish to do so to express their positions concerning the settlement. If no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party which wishes to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. Any party who wants information about or to negotiate concerning the proposed stipulation needs to contact the other parties as soon as possible. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary. Parties interested in the scheduling of proceedings are urged to stay in contact with the parties actively involved in the negotiations or the Commission to account for the possibility of last minute schedule changes.

SIGNED AT AUSTIN, TEXAS on this the 4th day of June 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

nsh

DOCKET NOS. 6477, 6525, 6660 and 6748

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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.	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER NO. 37

ORDER CONCERNING CONSIDERATION OF STIPULATION

As indicated in Order No. 35, a proposed stipulation is being considered by the parties. The hearing reconvened on May 22, 1986, for the purpose of discussing the status of the negotiations. The parties indicated that it would be desirable to have additional time for negotiations. As discussed at the hearing, in order to ensure that all parties have a reasonable and sufficient period of time to evaluate the proposed agreement, the dates set forth in Order No. 36 are hereby EXTENDED as set forth in this Order. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by 5:00 p.m. on Wednesday, May 28, 1986. The hearing will reconvene at 10:00 a.m. on Monday June 2, 1986, for the purpose of enabling any parties that wish to do so to express their positions concerning the settlement. If no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party wishing to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. Any party desiring information about or to negotiate concerning the proposed stipulation needs to contact the other parties as soon as possible. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary.

SIGNED AT AUSTIN, TEXAS on this the 23rd day of May 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Phillip Holder
for ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

nsh

DOCKET NOS. 6477, 6525, 6660 and 6748

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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.

PUBLIC UTILITY COMMISSION OF TEXAS

ORDER NO. 36

ORDER CONCERNING CONSIDERATION OF STIPULATION

As indicated in Order No. 35, a proposed stipulation is being considered by the parties. The hearing reconvened on May 15, 1986, for the purpose of discussing the status of the negotiations. Mr. Steven A. Porter, counsel for certain cities (the Cities) indicated that his clients would need longer than they originally had indicated to finalize their position concerning the proposed settlement, possibly as long as two more weeks. As discussed at the hearing, in order to ensure that all parties have a reasonable and sufficient period of time to evaluate the proposed agreement, the dates set forth in Order No. 35 are EXTENDED by one week. The hearing will reconvene on Thursday, May 22, 1986 at 1:30 p.m. for the purpose of discussing the status of the negotiations and any other pending procedural matters. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by noon on Tuesday, May 27, 1986. The hearing will reconvene at 10:00 a.m. on Thursday, May 29, 1986, for the purpose of enabling any parties who wish to do so to express their positions concerning the settlement. If no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party which wishes to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. Any party who wants information about or to negotiate concerning the proposed stipulation needs to contact the other parties as soon as possible. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary.

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

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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DOCKET NOS. 6477, 6525, 6660 and 6748

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.	§	

ORDER NO. 35

ORDER AND NOTICE OF CONSIDERATION OF STIPULATION

As all parties who have been present at the hearing (and probably many others) are aware, a proposed stipulation which would address most or all of the issues in this case is being considered by the parties and may ultimately be considered by the examiner and the Commission. At this point the proposed stipulation is being reduced to writing and some parties are still evaluating their positions concerning it. It is expected that the written stipulation will be filed and mailed to the parties next week. As discussed at the hearing, the hearing will reconvene on Thursday, May 15, 1986 at 1:30 p.m. for the purpose of discussing the status of the negotiations and any other pending procedural matters. Any party wishing to submit testimony to show that the proposed stipulation is in the public interest SHALL file such testimony by noon on Monday, May 19, 1986. As discussed at the hearing, the hearing will reconvene at 10:00 a.m. on Thursday, May 22, 1986, for the purpose of enabling any parties who wish to do so to express their positions concerning the settlement. In no opposition is expressed, evidence supporting the settlement will be taken on that day. Any party which wishes to express opposition to the proposed stipulation is expected to have a representative at the hearing on that day. Any party who wants information about or to negotiate concerning the proposed stipulation should contact the other parties as soon as possible. Deadlines previously set pertaining to prefiling of fuel reconciliation testimony and discovery are SUSPENDED pending the outcome of the settlement talks. If it becomes clear that a settlement will not be reached, the taking of evidence will resume. The hearing may convene on other days and for other purposes as necessary.

SIGNED AT AUSTIN, TEXAS, on this the 9th day of May 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

bdb

DOCKET NOS. 6477, 6525, 6660 and 6748

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	§
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APPEALS OF GULF STATES UTILITIES COMPANY FROM THE RATE PROCEEDING OF THE CITY OF ORANGE ET AL.	§

ORDER NO. 34

ORDER CONCERNING CONSOLIDATION OF CERTAIN APPEALS FROM MUNICIPAL RATEMAKING ORDINANCES

In Order No. 4 issued in Docket Nos. 6477 and 6525, a procedure was established whereby Gulf States Utilities Company (GSU) was required to serve notice of any appeal by it from city action on GSU's rate increase request and any motion to consolidate, together with a copy of Order No. 4, on the appellee city, and any objection to the motion was required to be filed within ten days. For the most part, such consolidations have been unopposed and approved without complications. However, this rate case is unusual in that several cities issued ordinances to reduce GSU's rates; others issued ordinances denying the requested rate increase; and others did both. Some of the cities issued more than one ordinance. In some cases the appeals were filed in Docket No. 6525; in others, they were filed in other dockets some of which were later consolidated with Docket No. 6525. This order is intended to the extent possible to clear up any confusion concerning what appeals are and are not included in these consolidated dockets. All of the appeals which are consolidated in this order were accompanied by motions to consolidate which have not been opposed, and the specified time for expressing opposition to all such appeals has elapsed. (In addition, arguably consolidations already have occurred pursuant to previous orders.) In accordance with the procedures set forth in Order No. 4, GSU's motions to consolidate with these dockets its appeals from the ratemaking ordinances of the following cities are hereby GRANTED to the extent that such consolidations have not already been accomplished: Port Arthur, Port Neches, Vidor, Groves, Sour Lake, West Orange, Pine Forest, Nederland and Beaumont. As indicated in the attached table, these consolidations are of appeals from rate ordinances denying the rate increase (or in some cases doing this and reconfirming a previously ordered reduction of rates), and not from ordinances reducing the rates. In accordance with the Order No. 4 procedures, the examiner has assumed from the participants' silence concerning the motions that there is no opposition to such consolidations. In the event that this assumption is incorrect, any opposition to the consolidations accomplished in Order No. 34 shall be in writing and filed within ten days after the date of this order. Any such filing shall take the form of a motion to sever, specifying the municipal action in question and setting forth in detail the reasons for such opposition. Such motion may be ruled on based on written filings.

In order to ensure that no approvals of consolidations have been unintentionally withheld, the examiner has prepared a table tracing the various appeals and consolidations, attached as Appendix A. The parties, particularly GSU and the cities, are urged to review this table. Errors or omissions in the table SHALL be brought to the examiner's attention by written filings within ten days after the date of this order.

SIGNED AT AUSTIN, TEXAS, on this the 7th day of May 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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APPENDIX A

MUNICIPALITIES IN GSU'S TEXAS SERVICE AREA

(Docket numbers reference the docket the appeal was originally filed in, if different from Docket No. 6525. Dates reference the date of the appeal or order. Numbers in parentheses indicate the number of the order of consolidation.)

	Rates Reduced		Increase Denied	
City and Division	Appeal Filed	Consolidation Ordered	Appeal Filed	Consolidation Ordered
Beaumont Division				
Ames			10/31	11/19(9)
Anahuac			10/31	11/19(9)
Beaumont	6748	4/24(33)	4/2	5/7(34)
Bevil Oaks			1/24	2/13(26)
Bridge City	6660	3/7(29)	11/1	11/19(9)
Chester			11/1	11/19(9)
China			2/10	3/4(27)
Colmesneil			10/24	11/12(8)
Crystal Beach			11/1	11/19(9)
Daisetta			11/1	11/19(9)
Dayton			10/24	11/12(8)
Devers			11/15	12/16(14)
Grayburg				
Hardin				
Kountze	6748	4/24(33)	1/22	2/13(26)
Liberty				
Lumberton	6842*		10/31	11/19(9)
Nome			2/10	3/4(27)
Orange	6748	4/24(33)	2/14	3/4(27)
Pine Forest			3/17	5/7(34)
Pinehurst	6748	4/24(33)	10/24	11/12(8)
Rose City	6748	4/24(33)	2/10	3/4(27)
Rose Hill Acres	6748	4/24(33)	1/21	2/13(26)
Silsbee	6748	4/24(33)	1/21	2/13(26)
Sour Lake	6748	4/24(33)	2/11	3/4(27)
Vidor	6660	3/7(29)	2/11	5/7(34)
W. Orange			2/12	5/7(34)
Woodville			11/1	11/19(9)
Port Arthur Division				
Groves	6660	3/7(29)	2/11	5/7(34)
Nederland	6660	3/7(29)	3/3	5/7(34)
Port Arthur	6660	3/7(29)	2/11	5/7(34)
Port Neches	6660	3/7(29)	2/11	5/7(34)

City and Division	Rates Reduced		Increase Denied	
	Appeal Filed	Consolidation Ordered	Appeal Filed	Consolidation Ordered
Western Division				
Anderson				
Bremond				
Caldwell			10/31	11/19(9)
Calvert				
Chateau Woods				
Cleveland			11/25	12/16(14)
Conroe				
Corrigan			11/1	11/19(9)
Cut and Shoot				
Franklin			11/1	11/19(9)
Groveton			11/1	11/19(9)
Houston			2/5	3/4(27)*
Huntsville			1/13	2/4(24)
Kosse				
Madisonville				
Montgomery			12/2	1/3(15)
N. Cleveland				
Navasota			11/1	11/19(9)
New Waverly			11/19	12/16(14)
Normangee			11/25	12/16(14)
Oak Ridge North				
Patton Village				
Panorama Village			11/1	11/19(9)
Plum Grove				
Riverside			11/15	1/3(15)
Roman Forest			10/31	11/19(9)
Shenandoah			10/31	11/19(9)
Shepherd			11/1	11/19(9)
Somerville			10/31	11/19(9)
Splendora			11/1	11/19(9)
Todd Mission			11/25	12/16(14)
Trinity			11/25	12/16(14)
Willis			11/1	11/19(9)
Woodbranch			11/15	12/16(14)
Woodloch			1/3	1/22(19)

*Docket No. 6842 is still unconsolidated.

NOTE: Interim rates have been requested for all appeals included under the column "Rates Reduced."

DOCKET NOS. 6477, 6525, 6660 and 6748

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.	§

ORDER NO. 33
ORDER CONCERNING CONSOLIDATION OF CERTAIN APPEALS FROM MUNICIPAL RATEMAKING ORDINANCES

This order will consolidate Docket No. 6748, the appeals from the ratemaking proceedings of the Cities of Orange, Beaumont, Rose City, Pinehurst, Sour Lake, Rose Hill Acres, Silsbee, and Kountze, with the other three dockets styled above.

In each instance, the City enacted an ordinance lowering the rates of Gulf States Utilities Company, and the company filed an appeal with the Public Utility Commission. Thereafter, procedural orders established deadlines to deal with the two major questions which followed from the filing of those appeals: first, whether the appeals should be consolidated with the environs rate case of Gulf States Utilities Company (Docket No. 6525), and second, whether the company's request for interim rates should be granted. A series of procedural orders in Docket No. 6748 established deadlines for filings necessary to the resolution of those two questions. Based upon the materials filed, orders establishing interim rates in all of those cities by agreement of the parties have been entered, and the appropriateness of consolidation of the appeals in Docket No. 6748 with the environs case has become evident. Although given the opportunity to present arguments against the consolidation of these matters, no party in Docket No. 6748 has done so. Therefore, pursuant to P.U.C. PROC. R. 21.85, the appeals in Docket No. 6748 are CONSOLIDATED with the other three dockets numbered and styled above.

The examiners presume that the cities involved in these appeals might, although they did not file any objection to consolidation, have objections similar to those raised by the cities in Docket No. 6660 to a similar prospect. Those matters were dealt with in Order No. 29, and a copy of that order is attached hereto for the convenience of the parties. The same caveats in Order No. 29 are applicable to the appeals in Docket No. 6748.

The Commission has continuing jurisdiction over these matters pursuant to Sections 17(d) and (e) of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986).

SIGNED AT AUSTIN, TEXAS, on this the 24th day of April 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

Phillip Holder
PHILLIP WOLDER
ADMINISTRATIVE LAW JUDGE

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DOCKET NOS. 6477, 6525, and 6660

INQUIRY OF THE PUBLIC UTILITY COMMISSION OF TEXAS CONCERNING THE FIXED FUEL FACTOR OF GULF STATES UTILITIES COMPANY	§	PUBLIC UTILITY COMMISSION
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	§	OF TEXAS
APPEALS OF GULF STATES UTILITIES COMPANY FROM RATE PROCEEDINGS OF THE CITIES OF PORT NECHES ET AL	§	

ORDER NO. 29

ORDER CONCERNING CONSOLIDATION OF CERTAIN APPEALS FROM MUNICIPAL RATEMAKING ORDINANCES

Pursuant to the January 23, 1986, suggestion of the general counsel in Docket No. 6660, to the interim rate order of February 3, 1986, in that docket, as well as an order entered in the docket on February 21, 1986, the parties to that proceeding have filed written arguments regarding the possible consolidation of those appeals with the other two dockets styled above. No party opposed consolidation unconditionally, but the cities agreed to consolidation only if there are provisions for the severing of Docket No. 6660 in the event that Docket No. 6525 is withdrawn by Gulf States Utilities Company (GSU) or is dismissed by the Commission. The cities also expressed concern about the lapsing of the 185 day time limitation found in Section 26(e)(2) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986).

The standard for determining whether or not two or more dockets should be consolidated is found in P.U.C. PROC. R. 21.85. That rule provides that a motion for consolidation will not be granted without the affirmative consent of all parties to the proceedings, unless the presiding examiner finds that the proceedings involve common questions of law or fact, and that separate hearings would result in unwarranted expense, delay, or substantial injustice. There is no question but that there are numerous common questions of law and fact in the proceedings captioned above, since the Commission must set the rates that the municipalities in Docket No. 6660 should have set on the basis of the same test year used by the municipalities. The test periods presented by GSU to the cities and to the Commission in Docket No. 6525 are identical. Clearly, protracted hearings in two separate proceedings to adjudicate these common questions would result in unwarranted expense and considerable inconvenience to the parties. Therefore, the petitions for review of the ratemaking ordinances of the Cities of Port Neches, Port Arthur, Groves, Nederland, Bridge City, and Vidor assigned to Docket No. 6660 are CONSOLIDATED with the other two dockets styled above. However, the parties are advised that in the event that Docket No. 6525 is withdrawn or dismissed, the other appeals taken by GSU from ratemaking ordinances of various municipalities (which appeals have already

been consolidated with Docket No. 6525), together with the petitions for review which are the subject of Docket No. 6660, would be severable, and should be decided on the record to be developed in the hearing on the merits in Docket No. 6525.

As to the other caveat raised by the cities, it is clear that the parties, as well as the examiner, in Docket No. 6660 have proceeded on the assumption that the cities' ordinances can and should be classified as being either PURA Section 42 or PURA Section 43 actions. Under PURA Section 26(e), the time constraints for processing such appeals are significantly different, depending upon their classification as appeals of Section 42 or Section 43 actions. Appeals of PURA Section 43 actions--assuming the dichotomy is necessary--must be acted upon by the time of the final Order in Docket No. 6525, while appeals of Section 42 actions must be adjudicated within 185 days after the appeals are perfected. It has become obvious that the formalistic treatment and separation of Section 42 actions and Section 43 actions to arrive at difference time deadlines for processing appeals of those actions produces an absurd result: in this instance the Commission's jurisdiction in Docket No. 6660 (and its authority to order refunds due to the agreed interim rate orders) would expire before a final Order could be entered based on systemwide data in the environs case, due to significant extensions of the effective date by GSU in Docket No. 6525. The examiner in Docket No. 6660 suggested a possible resolution to this if GSU were willing to agree to parallel interim rate orders in the appeals assumed to be Section 43 proceedings, but GSU has refused to agree, and persual of the list of appeals in Docket No. 6525 demonstrates that a majority of the cities which are parties to Docket No. 6660 have not enacted separate ordinances merely denying the application of GSU. Therefore, no futher responses to that suggestion need be filed by the parties.

There are several other ways to respond to this perceived problem. First, one could assume that the 185 day deadline in PURA Section 26(e)(2) is applicable to the petitions for review in Docket No. 6660 and hold a separate hearing in that docket prior to that in 6525. Such hearing would of necessity involve a multitude of issues identical to those in Docket No. 6525, although one can anticipate that there would not be full participation in such a hearing of all parties to Docket No. 6525, and there would certainly not be as much time for full development of the issues prior to the hearing. Of course, if the parties to both proceedings were not the same, any holding in Docket No. 6660 would not be binding on those parties to Docket No. 6525 who were not also parties to Docket No. 6660. Furthermore, even if that difficulty could somehow be resolved, it is unlikely that there would be a final Order in Docket No. 6660 in time to prevent (via the doctrine of res judicata) relitigation or overlapping litigation of all the same issues in Docket No. 6525. Finally, since there is no extension of time in PURA Section 26(e)(2) for lengthy hearings, it is possible that the deadline would run before a final order can be reached anyway.

Second, it might be possible to read PURA Section 26(e) as not applying to Section 42 actions on appeal. Section 26(e) mentions the schedule of rates "proposed by the utility". It is therefore arguable that that section is grounded in the assumption that the proceeding which culminated in a municipal ratemaking ordinance was begun by the utility under Section 43 of the PURA. However, the advisability of holding Section 26(e) inapplicable is countervailed by the fact that Section 26(e)(2) expressly applies to "all other proceedings."

The third, and preferable, option in this analysis becomes apparent only after a close reading of Sections 42 and 43 of the PURA. The first sentence of Section 42 reads as follows:

> Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act.

Interestingly, subsection (f) of PURA Section 43 is remarkably similar to the sentence quoted above. It provides:

> If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

Notably, Section 42 provides that the regulatory authority may enter upon a rate setting proceeding on its own motion or upon a complaint, while Section 43 seems to be triggered by the filing of a statement of intent by the utility. No matter how the proceeding is initiated, the power to set rates in each instance appears to be congruent.

One might be impelled then in the question at hand to consider the order of the filings by and before the cities, to determine the "true" nature of the proceedings that were appealed in Docket No. 6660. Clearly, the filing of the rate requests by GSU on October 1, 1985, preceded the ratemaking ordinances of the cities enacted months later. Yet, the cities did not act uniformly to respond to the applications by lowering the rates. Some cities have enacted separate ordinances to lower the rates, and to deny the requested increase. Others which are appellees in Docket No. 6660 only lowered the rates.

As might be considered inevitable in an array of ratemaking actions of this nature taken by independent regulatory authorities, there has been at least one city that first denied the increase and then lowered the rates. Rose City

entered such ordinances on January 30, 1986, and February 13, 1986, respectively. Appeals from those two ordinances were taken separately and are pending in Docket Nos. 6525 and 6748, respectively. Notably, Rose City's Ordinance No. 48 set a hearing to set rates for GSU after reciting that the utility had filed a rate application on October 1; but after that hearing Ordinance 50 resulted, which was the February 13, 1986, ordinance lowering the rates. That city demonstrably considered its ratemaking efforts regarding GSU to be a unitary, albeit multifaceted, process, despite the fact that it enacted two ordinances.

Through its filing in Docket No. 6525 of an appeal from the Nederland ordinance denying the increase, GSU provides another interesting example of this principle. Nederland lowered the rates in its Ordinance No. 377 on February 5, 1986, and then enacted Ordinance No. 378 on February 25 denying the increase. GSU argues in its petition for review that the City of Nederland was without jurisdiction to enact the second ordinance, since its jurisdiction over GSU's rates in Nederland generally had been removed to the Public Utility Commission by virtue of GSU's petition for review of Ordinance No. 377 presently part of Docket No. 6660. GSU's argument is grounded in the notion that the regulatory authority does not have separable Section 43 and Section 42 jurisdictions in this fact pattern, but that the general subject matter of rate jurisdiction under the PURA is unitary rather than fragmented, where a rate application and proposals for a rate decrease are substantially concurrent. The examiners agree. This has certainly been the understanding behind practice at the Commission, where separate dockets would not without good reason be maintained for contemporaneous requests to charge a utility's rates upward or downward, whenever the ratesetting endeavor was basically one task.

One way of resolving the difficulty at hand might be to examine in minute detail the order of all other filings of various documents, of actions taken by parties and regulatory authorities, and authority cited in the various pleadings and orders, so as to classify these many ordinances; but the examiners believe a more commonsense approach is appropriate. The PURA should be read to avoid an absurd result; the actions taken by these regulatory authorities putatively under Section 42 of the PURA, while GSU's request for a rate increase was before them, are an integral part of the continuing efforts of the municipal regulatory authorities to scrutinize the utility's rates in light of current data. The proceedings occurring in and around the Section 42 and Section 43 facets of the investigation by the cities are basically one proceeding, and the appealed ratesetting ordinances are appropriately governed by PURA Section 26(e)(1), since they can accurately be characterized as proceedings in which relief similar to that sought in Docket No. 6525 has been concurrently sought from the Commission under its original jurisdiction.

The examiners believe that the third option set out above is preferable to the other two options. In order to avoid an obviously inefficient and nonsensical result traceable to a constrictive and self-defeating

interpretation of the PURA, the examiners state their belief that the appeals from the ratemaking ordinances of Port Neches, Port Arthur, Groves, Nederland, Bridge City, and Vidor are subject to the time constraints in PURA Section 26(e)(1). Any party wishing to address this issue further shall do so in writing, such arguments to be filed at the Commission no later than 10:00 a.m. on March 17, 1986.

SIGNED AT AUSTIN, TEXAS on this the 7th day of March 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Mary Ross McDonald for
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

Phillip Holder
PHILLIP HOLDER
ADMINISTRATIVE LAW JUDGE

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DOCKET NOS. 6477, 6525, and 6660

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	§	

ORDER NO. 32

ORDER DISCUSSING USE OF COMMISSION TECHNICAL RESOURCES IN WRITING EXAMINER'S REPORT

On March 4, 1986, the examiner sent the attached letter to Mr. Richard Galligan, the Commission's Executive Director. Mr. Galligan sent the attached response. Copies of both letters were sent to all parties.

On March 14, 1986, at the final prehearing conference, the examiner proposed that when the examiner's report is being written, that she utilize the personnel listed in Mr. Galligan's letter as not having been involved in the case for purposes of "running the numbers." (This term refers to performing the calculations necessary to ascertain the dollar impact on the utility and the various customer classes of a set of resolutions of issues, in this instance, the examiner's. In a case as complex as these dockets, such calculations are expected to require the use of sophisticated computer models.) The examiner requested comments by the parties concerning this proposal. Mr. Steve Porter, counsel for various cities (the Cities), requested that consideration of the issue be delayed. This request was granted. Written comments were filed by the Cities on March 17, 1986, and by the Office of Public Utility Counsel (OPC) and the Commission's general counsel on March 20, 1986. The parties were given an opportunity to make oral comments at the hearing on March 20, 1986. The only parties who expressed a position were the Cities, OPC, general counsel and Gulf States Utilities Company (GSU).

I. Cities' Position

In his written response, Mr. Porter requested that the examiner's initial proposal not be adopted. He argued that the revenue impact of the examiner's recommendations is an issue of fact which must be decided by the Commission. Mr. Porter stated that the staff is a "party" to the case, in that it presents witnesses and takes positions on the issues. He expressed concern that even Commission employees who have not participated in the case would not be independent from the staff which did participate. Mr. Porter indicated that such employees are supervised by the same individuals who supervise the staff witnesses, that the staff in most cases takes similar positions on the issues,

and that the employees would utilize a computer program which is not in the record to run the examiner's numbers. Mr. Porter suggested instead that the examiner provide her decisions on the issues to all parties, so that they could run the numbers using their own consultants.

In oral remarks, Mr. Porter expressed the opinion that the examiner's initial proposal would result in an unlawful ex parte communication between the examiner and a party to the case, that is, the staff. Mr. Porter said that he was relying on the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1986) rather than the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1986). Mr. Porter commented that technically, arguably under APTRA the examiner's initial proposal is lawful. However, he believes that his proposal would promote public confidence in the ratemaking process. Mr. Porter was concerned that the other parties do not know the inputs and assumptions of the computer model used at the Commission. He found merit in general counsel's suggestion that the model could be introduced into the record in the case, and observed that the staff witnesses could be cross-examined on it.

In response to questions from the examiner, Mr. Porter suggested that the examiner could obtain the technical assistance she would need by asking questions of the various expert witnesses when they are on the stand. He agreed that two problems with this are that issues may arise for the first time late in the hearing or in the parties' briefs, and that because the examiner is required to base her decision on the evidence, she cannot know what her recommendations will be at the beginning of the hearing. Mr. Porter indicated that the idea of issuing examiner's reports without any numbers is not very appealing. He also commented concerning the problems the statutory deadline for a final decision in the rate case might create with respect to having the parties "run the numbers" after the examiner's report is issued. Mr. Porter suggested that a hearing could be held at which the parties could present their numbers. He felt that this proceeding could be considered to constitute "hearing days" for purposes of extending the statutory deadline pursuant to PURA Section 43(d). Mr. Porter did not know if his accounting witness, Randy Allen (whom general counsel noted was recently a Commission staff member) used a different computer model than did the staff. Mr. Porter was sure that consultants would be needed to perform the calculations, and that Mr. Porter could not, and would not expect the examiner to, be able to do so without the assistance of technical experts. He contemplated that once the examiner provided her recommendations to the parties so that they could run the examiner's numbers, that her recommendations would be regarded as final and could be released to the public and the press. He acknowledged that this might pose a problem in that the examiner would have to "sign off" on her

recommendations without knowing their dollar impact. For example, Mr. Porter could perceive cause for concern since the examiner would have no opportunity to evaluate the customer impact criterion before choosing a rate design. Accordingly, he suggested that the process first be completed for revenue requirement, and then for rate design. He believed that identical problems are raised when the Commission amends the examiner's report and has the numbers run again, so that the process would have to be repeated at that point. He acknowledged that it could be difficult to accomplish his proposals within the statutory time frame.

II. OPC's Position

In his written response, Public Counsel Jim Boyle stated that OPC shares many of the concerns about the examiner's initial proposal expressed in the Cities' written response. Mr. Boyle was concerned that the Commission employees will likely be supervised by the same individuals as the staff witnesses, and that they may have participated in staff meetings concerning and advocated in testimony positions similar to those taken by staff witnesses in this case. Mr. Boyle stated that at the very least, the staff's computer model and underlying assumptions should be made available so that all parties can replicate the Commission employees' calculations.

In oral comments, Walter Washington of OPC relied on OPC's written response. He indicated that parties like OPC do not have the support staff to run the numbers expeditiously, so that might pose a problem.

III. General Counsel's Position

In his written response, staff attorney Alfred R. Herrera indicated that general counsel has no objections to the examiner's initial proposal. He stated that such a procedure is authorized by APTRA Sections 14(q) and 17. Mr. Herrera took issue with the idea that the staff participating in the case constitutes a party (see, P.U.C. PROC. R. §21.42), and felt strongly that Commission employees not so participating are not a party. He stated that unlike a party, the Commission employees have no vested interest in this case. He indicated that the staff will gladly offer the revenue requirements computer program into the record.

In oral comments, Mr. Herrera argued that running the numbers is simply a ministerial function. He did not believe that it had ever been the case that the employees providing technical support to the examiner, for example, argued with the examiner as to what the examiner's recommendations should be. Mr. Herrera stated that concerns with the Cities' proposal include the following. First, the statutory deadline would be a problem. Second, the parties might have trouble interpreting the examiner's report and might need clarification from the examiner. Third, not all parties have the resources to run the numbers themselves. Mr. Herrera indicated that he would have problems "running the numbers" without technical assistance.

In response to questions from the examiner, Mr. Herrera stated that the staff could provide a computer program within a day and the underlying assumptions within four days after the examiner ordered them to do so.

IV. GSU

GSU took the position that the examiner is entitled to use technical resources of the Commission in the manner she had suggested. Counsel for GSU George Avery cited the provisions of APTRA referred to by general counsel, as well as PURA Section 4. Mr. Avery believed that it would be almost impossible for the examiner to perform her tasks without that kind of technical assistance. He stated that not to allow this would be over-judicializing the ratemaking process. Mr. Avery indicated that GSU is approaching this question from a broader perspective because it has a stake in seeing this process work effectively. Mr. Avery believed that Mr. Porter's proposals are totally unworkable. He stated that the parties have had difficulty in reaching agreement on many issues, and are unlikely to suddenly become non-adversarial after the examiner's report is issued. Mr. Avery could imagine them having a hearing just to argue about what the examiner meant. He was confident that the Commission employees can provide the examiner technical assistance in a professional manner without being in any way tainted by the fact that some staff members have taken a more active role.

V. Examiner's Conclusions

As the examiner indicated at the hearing, she appreciates the effort which the parties put into their comments and suggestions, which the examiner found to be most helpful. The examiner concludes that she should be able to utilize the resources of the Commission's technical experts who have not participated in the case where necessary in writing her report. The examiner specifically finds that this procedure not only is lawful, but in fact is what the legislature contemplated when it enacted the PURA and the APTRA. The examiner also believes that this procedure is both workable and fair. The staff computer models and underlying assumptions should be made available to the parties so that, if they choose to do so, the parties can cross-examine the staff witnesses concerning it and can themselves replicate the calculations after the examiner's report is issued. In addition, general counsel should offer the model into evidence in this case by the beginning of the staff case.

With respect to the legal issue, PURA expressly states that APTRA applies in Commission proceedings except to the extent inconsistent with the PURA (PURA Section 4.) APTRA explicitly authorizes Commissioners and examiners to utilize the expertise of employees who have not participated in a contested case. APTRA Section 14(q) states: "The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence." APTRA Section 17 provides: "pursuant to the authority provided in Subsection (q) of Section 14, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate

ex parte with employees of the agency who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence." The Legislature has assigned to administrative agencies the responsibility of adjudicating complex litigation which typically, as in this rate case, involves evaluation of large amounts of expert testimony and highly technical and complicated issues. To enable agencies to carry out this duty, agencies' jurisdiction has been structured in a way which will enable them to acquire and make use of specialized expertise in evaluating evidence. In enacting the prohibitions against unlawful ex parte communications (APTRA Section 17, PURA Section 6(g)), the Legislature most wisely made law the objective that the process should take place in public, with an opportunity for all parties to participate. An exception is carved out in APTRA Sections 14(q) and 17 for utilizations of the expertise of certain Commission employees. The implication is that evidence is to be taken in public, but that Commissioners and examiners will be allowed to evaluate this evidence and to ponder their decisions in private, utilizing the assistance of administrative aides or other agency employees who have not participated in the case, where necessary.

The examiner was somewhat startled by the implication in the Cities' arguments that the situation would be better if the staff did not testify. In the examiner's opinion, one way in which this Commission carries out the spirit, as well as the letter, of the law extremely well is that, unlike some agencies, the Commission staff testifies under oath and is cross-examined. Thus, this process is conducted in the open, and any staff recommendations which are adopted must withstand the same scrutiny as that given the parties' proposals. On the other hand, the fact that the agency has the benefit of detailed staff recommendations in the form of evidence virtually eliminates the need to seek such expertise out of the public's view pursuant to APTRA Sections 14(q) and 17. Thus for an examiner at the Commission, the only function which presents a continuing problem in this sense in a complex rate case is running the examiner's numbers. For the reasons explained in Part I of this order, this simply cannot be done at the hearing.

In a utility ratemaking context, the question of whether or not the general counsel should represent the public interest or the staff testify in hearings in contested cases is moot. The staff has a duty to do so under PURA. (PURA Section 8(c)). The fact that some members of an agency staff may participate in a hearing and others may assist agency heads or examiners as they finalize their decisions is also clearly contemplated in APTRA, as the choice of language in APTRA Section 17 ("may communicate ex parte with employees of the agency who have not participated in any hearing in the case") demonstrates.

The Cities and OPC express concerns as to the lack of structural separation between the staff which participates in the hearing and that which provides technical support for the triers of fact. However, this circumstance appears to be contemplated in the Commission division structure, which is specified in some detail in PURA Section 8(a) and (b). The Legislature has chosen a

mechanism for effecting separation which is not structural, but which probably is far more effective. Participating in an unlawful ex parte communication is grounds for automatic termination of employment (PURA Section 73(c)). A willful and knowing violation is a felony. (PURA Section 74(a).) Employees who might have an opportunity to engage in such communications are professionals, with reputations, licenses and certifications to protect. Moreover, general counsel points out that Commission employees have no real reason to engage in such communications.

The examiner is also of the opinion that the alternatives to utilizing the assistance of the Commission's technical staff to run the numbers are either unworkable or otherwise undesirable. The first alternative would be to issue the examiner's report without a quantification of the impact of the examiner's recommendations. However, as counsel for the Cities points out, this alternative is unappealing. It would make it difficult for the public to understand the recommendations, and for the parties to do so in time to make decisions with respect to exceptions and replies to exceptions. In addition, while the utility, the staff and hopefully, as in this case, at least one of the better-funded intervenors might be able to "run the numbers" themselves, other intervenors likely would not have this capability. One should note that there is nothing to prevent any party with the computer capability from running the examiner's numbers even if the recommendations are quantified in the examiner's report. If changes in the quantifications are appropriate, this can be brought to the Commission's attention in exceptions. This is in fact the procedure followed currently. Finally, as Mr. Porter acknowledged, it would be difficult for the examiner to recommend a desirable rate design without first having a quantification of her recommended revenue requirement.

A second possiblity might be regarded as having the examiner run her own numbers. However, as counsel for the Cities, staff and GSU indicated, it is unlikely that even a lawyer very familiar with utility ratemaking will have this capability for a rate case as complex as these dockets without special training. Such a training program does not presently exist for examiners. If it did, this might itself raise questions for the Cities or OPC if the staff was providing the training or the staff model was the one being used. Finally, the time necessary to adapt to a particular case, and to perform and check, the computer runs would reduce the amount of time the examiner has to write the report, or require shortening of the time allotted for some other stage of the process.

A third possiblity is that suggested by Mr. Porter. As the examiner understands it, this would require four hearings after the hearing on the merits: separate revenue requirement and rate design quantification hearings with respect to the examiner's recommendations, and a repeat of this process in connection with the Commission's decisions. Obviously this process would require use of considerable Commission and party resources. Moreover, it is likely that either the parties would have to litigate what the examiner or

Commission meant, or that a procedure would have to be set up whereby the examiner or Commission could clarify what was meant. Finally, there appears to be insufficient time for the Cities' proposals because of the required statutory time frame, even if the actual hearing days were allowed to extend the deadline pursuant to PURA Section 43(d).

The fourth option, which the examiner intends to utilize, is as follows. The examiner will utilize the assistance of Commission employees who have not participated in the case in running her numbers. These employees will not argue with the examiner about the merits of her recommendations. The quantifications will be reflected in the Examiner's Report. The examiner also finds general counsel's suggestion to be meritorious. The staff SHALL provide the parties as soon as possible, and no later than five working days after the date of this order, a copy of the staff computer models used to calculate the impact of resolutions of rate case issues on the utility and its various customer classes, and also of the underlying assumptions. General counsel SHALL offer into evidence a copy of such models. The staff witnesses may be cross-examined concerning the models, underlying assumptions or other related matters.

The examiner is confident that if a party has difficulties with her recommended result, that the party will appeal this order to the Commission so that the matter can be resolved before it becomes a problem in this case.

SIGNED AT AUSTIN, TEXAS on this the 27th day of March 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

tv

Public Utility Commission of Texas

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

March 12, 1986

Ms. Elizabeth Drews
Administrative Law Judge
Public Utility Commission of Texas
7800 Shoal Creek Boulevard, Suite 400N
Austin, Texas 78757

RE: Docket Nos. 6477 and 6525--Inquiry of the Public Utility Commission of Texas Concerning the Fixed Fuel Factor of Gulf States Utilities Company, and Application of Gulf States Utilities Company for Authority to Change Rates

Dear Ms. Drews:

The following staff in the Accounting Division have not been assigned to or involved in the above-referenced matters:

Judy Poole	Liz Farrell
Pam McClellan	Candy Kever
Bob Welchlin	Rhonda Rieter

The following staff in the Economic Research Division have not been assigned to or involved in the above-referenced matters:

Kim Oswald	Pat Scheuer
Jay Zarnikau	

Kent Saathoff in Engineering has not been assigned to or involved in the above-referenced matters.

These staff, in the aggregate, possess the ability to determine the impacts of the examiner's recommendations on the utility and on the utility's customers.

Sincerely,

Richard A. Galligan
Executive Director

cc: All parties of record
General Counsel

Public Utility Commission of Texas

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

Peggy Rosson
Chairman
Dennis L. Thomas
Commissioner
Jo Campbell
Commissioner

March 4, 1986

Mr. Richard Galligan
Executive Director
Public Utility Commission of Texas
7800 Shoal Creek Boulevard, Suite 400N
Austin, Texas 78757

RE: Docket Nos. 6477 and 6525--Inquiry of the Public Utility Commission of Texas Concerning the Fixed Fuel Factor of Gulf States Utilities Company, and Application of Gulf States Utilities Company for Authority to Change Rates

Dear Mr. Galligan:

I would very much appreciate your preparing for me a list of Commission staff who will not testify in the above styled case and who have not discussed the case directly or indirectly with any party to the case or with anyone at the Commission who is participating in the case. The list should include only persons capable of assisting me pursuant to Section 17 of the Administrative Procedure and Texas Register Act (APTRA) Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1986). I would also like your opinion as to whether or not the staff listed in the aggregate can "run the numbers" showing the exact dollar impact on the utility and on the customers of the examiner's recommendations to the Commission. Please send a copy of your response to all parties of record in this case and to general counsel. A service list is attached. If at all possible, I need this list no later than Wednesday, March 12, 1986.

A copy of this letter is being sent to all parties of record and to general counsel. These participants are advised that, after comments, if any, by the parties and general counsel, the examiner intends to decide at the final prehearing conference or beginning of the hearing how this matter will be handled. Possible outcomes could include, among other things, utilizing the personnel listed, or issuing the Examiner's Report "without numbers". This decision will be appealable to the Commission.

Sincerely,

Elizabeth Drews

Elizabeth Drews
Administrative Law Judge

cc: All Parties of Record
General Counsel

DOCKET NOS. 6477, 6525, and 6660

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	PUBLIC UTILITY COMMISSION OF TEXAS

ORDER NO. 31

ORDER GRANTING STATE TREASURER'S MOTION CONCERNING SERVICE LIST, ESTABLISHING DEADLINE FOR MOTIONS TO STRIKE RATE DESIGN TESTIMONY, LOWERING FUEL FACTOR AND ORDERING FUEL COST OVERRECOVERY REFUNDS

The final prehearing conference in this case was held on Friday, March 14, 1986. The following persons entered appearances: Cecil Johnson, Donald Clements and George Avery for Gulf States Utilities Company (GSU); Rex VanMiddlesworth and Elena Marks for Texas Industrial Energy Consumers (TIEC); Frederick Ritts for North Star Steel Texas, Inc. (NSST); Scott McCollough for the State Agencies; Steven Porter for the Cities; Jim Boyle and Walter Washington for the Office of Public Utility Counsel (OPC); and Alfred Herrera of the Commission General Counsel's Office for the public interest.

The hearing on the merits was convened on Monday, March 17, 1986. The same attorneys appeared at the hearing. In addition, appearances were entered by or for Ralph Gonzalez for TIEC, Jim Dozier for Montgomery County, Jerry Benedict for the State Treasurer, Earl Black for the City of Groves, W. C. Sanderson for the Cities of Nome, Sour Lake and China, H.P. Wright for the City of Port Neches, Jerry Hatton for the Cities of Bevil Oaks and Vidor, Geoffrey Gay and Brad Yock for OPC, Joyce Roddy for Concerned Citizens of Southeast Texas, Mack Gothia for Concerned Utilities Rate Payers Association, Inc., and Bret Slocum and Frank Davis of the Commission General Counsel's Office for the public interest. For several cities, in addition to counsel, city council members and other city officials appeared. The matters ruled on in this order were among the issues taken up at the final prehearing conference or at the beginning of the hearing on the merits.

I. State Treasurer's Request Concerning Service List

On March 7, 1986, the intervenor State Treasurer filed a notice that Jerry C. Benedict would be counsel of record for the State Treasurer in this case rather than W. Scott McCollough. Mr. McCollough represents the intervenor

GSU customer State Agencies. Mr. Benedict and Mr. McCollough are Assistant Attorneys General. The State Treasurer requested separate service of filings in this case upon Mr. Benedict and Mr. McCollough. This motion was unopposed, is reasonable and is GRANTED.

II. Deadline for Motions to Strike Rate Design Testimony

As indicated at the hearing, motions to strike prefiled direct or rebuttal testimony relating to rate design SHALL be filed no later than Monday, April 14, 1986.

III. Motions Concerning Fuel Factor and Refunds

On Friday, February 21, 1986, the Commission adopted on an emergency basis amendments to its fuel rule, P.U.C. SUBST. R. 23.23.

On Friday, February 28, 1986, GSU filed a motion requesting reduction of its interim fuel factor and a refund to its customers of fuel cost overrecoveries, utilizing the procedures and methodologies set forth in the new fuel rule. GSU requested that this relief be made effective for the April 1986 billing cycle.

On March 4, 1986, the State Agencies filed a response and moved for public notice, discovery and a hearing. The State Agencies indicated that there was no information in GSU's petition that would allow the State Agencies to independently verify GSU's proposed fixed fuel factor or claimed overcharge amount or to calculate the amount of refund due the State Agencies.

In Order No. 28, signed Friday, March 7, 1986, the examiner ordered GSU to file by the beginning of the March 14, 1986, prehearing conference information sufficient to enable verification of GSU's proposed fuel factor and claimed overcharge amount, and to allow calculation or, if necessary, estimation of the refund which would be distributed to each customer class using GSU's proposed methodology. The parties were urged to try to resolve their differences by negotiation. GSU met this deadline.

A. Reduction of Fuel Factor

As recently amended, P.U.C. SUBST. R. 23.23(b)(2)(D) provides in part:

> The utility's fixed fuel factor is subject to reduction on a monthly basis. A lower interim fuel factor may be established and placed in effect in the first full billing cycle after it is approved by an order of the Commission, under the following conditions:...
>
> (ii) If the utility has materially over-recovered or projects to materially over-recover its fuel costs, the utility shall file a petition with the Commission to lower its existing fuel factor and establish a new interim fuel factor.... Such a petition may be approved by the Commission without a hearing.

GSU's motion notes that GSU's fuel factor was last changed and refunds were ordered pursuant to a previous motion by GSU in this docket. In connection with that motion, by stipulation of the parties, Order No. 7 established the following interim fuel factors, based on a non-voltage differentiated system-wide fuel factor of 2.788¢/KWH:

Secondary	-	2.924 ¢/KWH
Primary	-	2.845 ¢/KWH
34.5 KV	-	2.826 ¢/KWH
69 KV	-	2.703 ¢/KWH
138 KV	-	2.703 ¢/KWH
230 KV	-	2.681 ¢/KWH

GSU's present motion states that its proposal to reduce the fuel factor results from its continuing successful efforts to secure fuel at lower costs. GSU indicated that revisions to an existing fuel contract and negotiations of short term gas supply contracts have resulted in lower fuel costs which make it appropriate to revise the fuel factor. Based on these lower fuel costs and on its experience for the period from October 1, 1985 through January 31, 1986, GSU proposed the following interim fixed fuel factors, based on a non-voltage differentiated system-wide fuel factor of 2.477¢/KWH:

Secondary	-	2.598 ¢/KWH
Primary	-	2.527 ¢/KWH
34.5 KV	-	2.511 ¢/KWH
69 KV	-	2.402 ¢/KWH
138 KV	-	2.402 ¢/KWH
230 KV	-	2.382 ¢/KWH

GSU explained that these proposed interim fuel factors are based on the average cost of fuel per KWH sold for reconcilable fuel costs incurred in January 1986 (excluding a non-recurrent adjustment of coal fuel prices for the year 1985 realized in January 1986). The motion states that the voltage differentiated factors were calculated using the loss multipliers approved in Docket No. 5820 and utilized in Docket No. 6376 and in connection with the earlier adjustment in the present case. GSU requested that its fuel factor be so lowered without a hearing. Attached to GSU's motion is an affidavit by GSU Director of Technical Accounting David L. Rogers.

At the prehearing conference, the State Agencies expressed a desire to review the information distributed by GSU that day before indicating if they objected to the fuel factor reduction part of GSU's motion. At the hearing, all parties present, including the State Agencies, indicated support for or no opposition to granting GSU's motion to reduce its fuel factor, subject to reconciliation, and with the understanding that they did not waive any rights to argue that it should be further reduced.

The examiner hereby ORDERS that effective with GSU's April 1986 billing cycle, GSU shall implement a new interim fixed fuel factor in accordance with its motion. The new factor takes the place of the previous factor and is to remain in effect until revised by subsequent order. It is subject to reconciliation during GSU's pending rate case, if the record is sufficiently developed, or if not, in GSU's next general rate case or fuel reconciliation docket, whichever should come first.

B. Refunds of Fuel Cost Overrecovery

P.U.C. SUBST. R. 23.23(b)(2) provides in part:

> (F)...
> (i) When a material over-recovery of allowable fuel costs is found to exist during a general rate case or fuel reconciliation proceeding, refunds shall be made by the utility as specified by the methods outlined in subparagraph (H) of this paragraph....
>
> (H) All refunds shall be made using the following methods:
>
> (i) interclass allocations of refunds shall be based on the historical kilowatthour usage of each rate class adjusted for line losses;
>
> (ii) intraclass allocations of refunds shall depend on the voltage level at which the customer receives service from the utility. Customers who receive service at transmission voltage levels shall be given refunds based on their individual actual historical usage recorded during the periods in which the cumulative over-recovery occurred. All other customers shall be given refunds based on the historical kilowatthour usage of their rate class; and
>
> (iii) all refunds shall be made through a one-time bill credit. Customers who receive service at transmission voltage levels shall be given a lump sum credit. All other customers shall be given a credit based on a refund factor which will be applied to their kilowatthour usage over a one month period. This refund factor will be determined by dividing the amount of refund allocated to each rate class, by forecasted kilowatt hour usage for the class during the month in which the refund will be made.

In its motion, GSU requested that it be authorized to refund to its customers its fuel cost overrecovery for the period from October 1, 1985, through January 31, 1986. GSU indicated that the refund amount is $13,858,585, including interest. GSU stated that the refunds will be made in accordance with the new fuel rule, with one requested clarification. GSU observed that the rule provides that customers who receive service at transmission voltage levels shall be given a lump sum credit. GSU proposed that customers receiving service on large power service (LPS) and large industrial service (LIS) rates will be those customers given the lump-sum credit provided for in the rule. However, at the prehearing conference, GSU withdrew the request for this interpretation, indicating that it felt it could comply strictly with the new fuel rule. GSU requested approval of the refunds without hearing.

In their written request for a hearing, the State Agencies objected to applying the methodology for allocating and distributing refunds described in

the new fuel rule. They argue that they will be penalized if this methodology is used, because State Agency electricity consumption is lower in relationship to other distribution level customers as a result of Commission recommended conservation efforts and State Agency attempts to respond to severe budget constraints. The State Agencies want discovery and a hearing in order to show this. They stated that they were given no notice of the Commission's new fuel rule, and that they intend to participate in the final rulemaking procedures. The State Agencies argue that the Commission cannot by rule eliminate the statutory due process right to a hearing when a hearing is requested by an intervenor or otherwise required by statute.

At the hearing, the parties agreed to the amount overrecovered in February 1986, $4,499,473, and additional accumulated interest through March 1986 being included in the amount to be refunded. The fuel cost overrecovery through February plus interest through March 1986 totals $18,756,291. The examiner agrees that these amounts should be included.

In oral argument, GSU opposed the State Agencies' request for a hearing and urged that the refunds be implemented with the April 1986 billing pursuant to the new fuel rule. GSU stated that it was not in total agreement with the allocation and distribution methodology provided for in that rule. In particular, GSU indicated that for four of its rate schedules, LPS, LIS, large general service (LGS) and general service (GS), some customers are served at distribution and some at transmission voltage levels. Whether such a customer is served at transmission or distribution voltage levels depends partly on customer power needs and partly on whether the customer is located near transmission or distribution facilities. As a result, Under P.U.C. SUBST. R. 23.23(b)(2)(H), customers within the same rate schedule would have their refunds calculated and distributed differently. GSU argued that the new fuel rule applies, and that it filed its motion in these dockets for convenience, and could just have easily have requested a separate docket. GSU indicated that it could accomplish the refund in accordance with the new fuel rule. GSU agrees with the intent of the new rule, which is to expedite distribution of fuel cost overrecovery refunds.

The State Agencies presented four arguments. First, they contend that the new fuel rule does not apply, because Docket No. 6477, the fuel factor inquiry docket, and Docket No. 6525, the rate case, were initiated before the rule was passed. (GSU filed this request for a refund after the rule was passed.) Second, they argue that the new fuel rule is unreasonable, and that refunds should be calculated on a historical basis. Third, they allege that their difference in consumption levels constitutes good cause for an exception to the rule. Fourth, they contend that they cannot be deprived by rule of a hearing when they request it. The State Agencies cite the following cases, copies of which were provided to the examiner: Smith v. Del. Coach Co., 70 A.2d 257 (Del. Ch. 1949); Boyd v. Southeastern Telephone Co., 105 So.2d 889 (Fla. Dist. Ct. App. 1958); Mountain States Tel. & Tel. Co. v. State Corp. Commission, 337 P.2d

943 (N. M. 1959); Am. Smelting & Refining Co. v. Fed. Power Commission, 494 F.2d 925 (D.C. Cir. 1974); Friends of the Earth v. Pub. Service Commission, 254 N.W.2d 299 (Wis. 1977); Va. Electric & Power Co. v. Pub. Serv. Commission of W. Va., 248 SE2d 322 (W.Va. 1978); and Re Pub. Serv. Co. of N.H., 31 PUR 4th 351 (N.H. Pub. Utilities Commission 1979). Mr. McCollough indicated that his clients are served off almost every rate schedule except residential, and include both transmission and distribution level voltage customers. He is concerned about only the distribution level customers in connection with this refund dispute.

Mr. Benedict agreed with Mr. McCollough. The State Treasurer believes that by law refunds must be made historically and are subject to the Unclaimed Property Law, regardless of cost of administration of refunds, and that the Commission has no discretion in this matter.

Mr. VanMiddlesworth indicated that he believes that there is a good argument that fuel cost overrecoveries must be refunded on a historical basis, but that balancing concerns include cost and feasibility of administering refunds. The TIEC customers are all transmission level customers, so they already have what the State Agencies seek. TIEC urges that the refunds be made promptly. NSST concurred with TIEC's argument.

Mr. Porter and Mr. Boyle stated that if the State Agencies want a hearing it must be provided.

Mr. Herrera argued that the new fuel rule does apply by its terms, and that questions of reasonableness of the rule must be resolved in district court pursuant to Sections 5(d) and 12 of the Administrative Procedure and Texas Register Act (APTRA) Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1986). Mr. Herrera believes that under APTRA, the State Agencies have a right to a hearing on all contested issues in a docketed case, but may not challenge the wisdom of a rule in this forum.

It is emphasized at the outset that the issues raised obviously present a policy question for the Commission. The Commission's options include upholding this order if appealed, interpreting its new fuel rule differently than the examiner, amending its new fuel rule which has not yet been adopted on a permanent basis, and interpreting its substantive rules as a whole to allow a hearing on the issue of whether or not good cause exists to grant an exception to the new fuel rule. The examiner notes that the hearing on the merits of the rate request began on March 17, 1986, and will continue for a number of weeks. The rate case has a statutory deadline. The deadlines for discovery and prefiling of testimony have passed. Thus, as a practical matter, if discovery and a hearing are to be conducted concerning the fuel refund question, the issue should be severed from this rate case, and assigned a new docket number and a new examiner.

If there were no new fuel rule, the examiner would grant the State Agencies' request and set in place procedures for scheduling a hearing. However, the examiner concludes that the new fuel rule does apply. Moreover, the very issue which the State Agencies wish to litigate, the methodology for allocation and distribution of refunds, is clearly determined by rule. The Commission has the authority to resolve issues by rule as well as by adjudicative decision. (Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c, Section 16 (Vernon Supp. 1986).) There are specific procedures for exercising both types of authority, and for challenging each such exercise. (See APTRA.) The examiner is of the opinion that when an issue has been unambiguously resolved by rule, there is no requirement that a party be allowed to challenge the rule itself by a hearing before an examiner in a contested case.

There is a general provision that the Commission may make exceptions to its rules for good cause. (P.U.C. SUBST. R. 23.2). The examiner considered whether or not she should construe the State Agencies' motion as a request for a good cause exception to the rule, and for a hearing in order to take evidence on the issue of good cause. However, the language of the new fuel rule is very specific: "...refunds shall be made by the utility as specified by the methods outlined in subparagraph H..." and "All refunds shall be made using the following methods..." (underlining supplied.) It may be that the Commission intended that when the refund methodology provided by the rule is challenged, that a hearing should be held. However, the examiner has had difficulty gleaning such intent from the language of the rule or from the Commission's comments at the open meeting at which the rule was adopted. This is particularly true in that the rule does not appear to leave room for public notice. The comments at the open meeting seem to suggest a policy decision by the Commission that the public interest would be better served by promulgating a generic rule setting forth a refund methodology than by postponing refunds for extended periods of time while refund methodologies are litigated in docketed cases involving individual electric utilities.

GSU's motion with respect to implementing refunds is hereby GRANTED, with two changes. First, GSU's requested interpretation concerning transmission voltage level was withdrawn and is not approved. Refunds SHALL be made using the methodology described in the new fuel rule. Second, refunds SHALL be implemented using the more up-to-date $18,756,291 figure previously discussed.

At the hearing, all parties present agreed to appeals, if any, from the fuel refund part of this order being due two days after it is issued. They further agreed to the Commission considering such appeals at the open meeting scheduled for March 26, 1986, should the Commission wish to consider such appeals and to do so on short notice. The parties agreed to this so that if

refunds are ordered pursuant to the new fuel rule, they can be included in the April 1986 billing, and alternatively, if the relief requested by the State Agencies (additional public notice, discovery and a hearing) is ordered, that this process can commence as soon as possible. The arguments are summarized in some detail in this order in an effort to assist the Commission should it choose to consider such appeals on March 26, 1986. The examiner notes that if appeals are filed on Friday, March 21, 1986, under P.U.C. PROC. R. 21.106, the order would be deemed upheld fifteen days later, or on Monday, April 7, 1986. Therefore, if appeals were filed and the Commission wished to consider them at the open meeting presently scheduled for Wednesday, April 9, 1986, for example, an extension in the time for ruling on such appeals would be necessary.

SIGNED AT AUSTIN, TEXAS on this the 19th day of March 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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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
APPLICATION OF GULF STATES UTILITIES COMPANY FOR AUTHORITY TO CHANGE RATES	§	OF TEXAS

ORDER NO. 27

ORDER GRANTING MOTIONS TO CONSOLIDATE

Gulf States Utilities Company (GSU) filed an appeal from the decisions of the Cities of Houston on February 5, 1986, of Rose City, China and Nome on February 10, 1986, of Sour Lake on February 11, 1986 and of Orange on February 14, 1986. These cities had denied GSU's request for a rate increase. With each appeal was a motion to consolidate the appeal with the present case. No objections to GSU's motions to consolidate were filed. In accordance with the procedures set forth in Order No. 4, these motions to consolidate are hereby GRANTED.

SIGNED AT AUSTIN, TEXAS on this the 4th day of March 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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DOCKET NOS. 6477 and 6525

1986 FEB 13 PM 2:30

PUBLIC UTILITY COMMISSION

OF TEXAS

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

ORDER NO. 26

ORDER CANCELLING PREHEARING CONFERENCE AND GRANTING MOTIONS TO INTERVENE AND MOTIONS TO CONSOLIDATE

I. Cancellation of Prehearing Conference

By order of February 4, 1986, a prehearing conference was scheduled for Friday, February 14, 1986. The deadline for filing motions or requests to be considered at that prehearing conference was noon on Wednesday, February 12, 1986. By 9:00 a.m. on Thursday, February 13, 1986, all parties who had filed such a motion or request or, indeed, who had appeared at any of the discovery prehearing conferences, had advised the examiner by telephone that their disputes had been settled and that they had no disputes which still needed resolution by the examiner. Given that the need for this prehearing conference has disappeared, it is hereby ORDERED that the prehearing conference scheduled for Friday, February 14, 1986, at 10:00 a.m. is hereby CANCELLED. All parties were so advised by telephone.

II. Motions to Intervene

On January 24, 1986, Concerned Utility Rate Payers Association, Inc. filed a motion to intervene. On January 28, 1986, Burlington Northern Railroad Company (Burlington) filed a motion to intervene. Burlington indicated that its participation will be limited to the narrow issue in which it has an interest, which concerns the confidentiality of its contracts with GSU. Both of these motions were filed after the deadline for intervention. However, the deadline for responding to these motions had expired, and no objections have been filed. These motions are hereby GRANTED. Ms. Phyllis Schunck, counsel for Burlington, has advised the examiner that the parties need not serve on her copies of testimony on the merits of the rate case, but that she wants copies of other documents. Late intervention will not be grounds for disturbing the procedural schedule already established in this case. To the extent that the new intervenors wish to participate, they are advised to obtain copies of the Commission's procedural rules and of past orders issued in this case, with which they will be expected to comply.

III. Motions to Consolidate

Gulf States Utilities Company (GSU) filed an appeal from the decision of the Cities of Rose Hill Acres and Silsbee on January 21, 1986, of the City of

Kountze on January 22, 1986, and of the City of Bevil Oaks on January 24, 1986. These cities had denied GSU's request for a rate increase. With the appeal was a motion to consolidate the appeal with the present case. No objections to GSU's motion to consolidate were filed. In accordance with the procedures set forth in Order No. 4, these motions to consolidate are hereby GRANTED.

SIGNED AT AUSTIN, TEXAS, on this the 13th day of February 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews

ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

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