

lignite, the pricing structure utilized by Shell, price escalation mechanisms, data concerning the quantity and quality of reserves, information pertaining to the quantity and quality of deliveries to be made under the contract and technical matters involving mine operations.

2. Shell does not customarily reveal its sales contracts or their contents and, without exception, includes a confidentiality provision in them.

3. Shell was not obligated to furnish the contract to LCRA and would not have done so without assurances that it would be held in confidence.

....

5. The gulf coast lignite market is just opening up. The contract is the first one of its kind in the state of Texas. To make it available to the public under [the Open Records Act] would severely damage Shell's competitive position in the gulf coast lignite market place.

A copy of the confidentiality agreement between LCRA and Shell was also submitted.

We believe Open Records Decision No. 256 (1980) is dispositive of this matter. That decision involved a job market survey undertaken by the city of Dallas to determine whether the salaries it paid to photographers and darkroom technicians were comparable to salaries in private industry. Part of the materials in question were longhand notes reflecting wage rate information acquired from the employers who were contacted.

Open Records Decision No. 256 concluded that this information was excepted from disclosure under section 3(a)(10) of the Open Records Act, as:

trade secrets and commercial or financial information obtained from a person and privileged or confidential by statute or by judicial decision.

The decision relied primarily upon National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974), a leading case involving the Federal Freedom of Information Act which

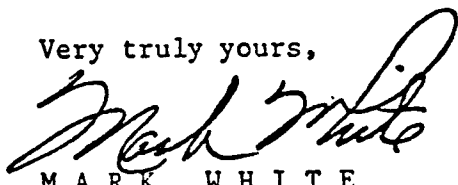
established the following standard for determining the confidentiality of commercial and financial information:

[C]ommercial or financial matter is 'confidential' for purposes of the exemption if disclosure of the information is likely to have either of the following effects: (1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.

Id. at 770. In support of its contention that the longhand notes could be withheld, the city argued that no city ordinance required private employers to cooperate with city officials in a job market survey, that each employer was assured that the confidentiality of his answers would be maintained, and that the city could not conduct complete job market surveys in the future if companies knew that salary data was disclosable. Open Records Decision No. 256 concluded that inasmuch as the release of information reflecting wage rates paid by individual employers was likely to impair the city's ability to obtain essential information in the future, the longhand notes reflecting this information could be withheld.

We believe the reasoning of Open Records Decision No. 256 and the National Parks case is applicable in this instance. There can be no question that LCRA must be able to acquire this type of information in order properly to perform its duties in serving the public. It is also abundantly clear that, but for the confidentiality agreement, LCRA would never have acquired a copy of this contract for review. Our examination of the copy of the contract that you submitted and our assessment of the particular facts here involved convince us that both of the standards set forth in the National Parks case have been met in this instance. We therefore conclude that you need not release the copy of the contract in your possession.

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Walter Davis
Rick Gilpin
Jim Moellinger

BSB
DOCKET NOS. 6477 and 6525

RECEIVED
1986 JAN 14 PM 4:03

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. 17

NOTICE OF SIXTH PREHEARING CONFERENCE AND
ORDER RULING ON DISCOVERY DISPUTES

I. Notice of Sixth Prehearing Conference

Pursuant to Order No. 4, on January 9, 1986, Gulf States Utilities Company (GSU) filed a request for a prehearing conference to resolve disputed requests for information (RFIs).

Pursuant to P.U.C. PROC. R. 21.83, a sixth prehearing conference will be conducted herein on Friday, January 24, 1986, beginning at 1:30 p.m. at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas. The following matters will be considered at the prehearing conference:

1. The discovery disputes referenced in GSU's request and any other request or motion filed with the Commission and served upon the parties on or before noon on Wednesday, January 22, 1986; and
2. Any other matters which may aid in the simplification of the proceedings and the disposition of any issues in controversy including the stipulation of uncontested matters.

The parties are urged to continue their best efforts to resolve the above and any other discovery disputes.

II. Discovery Disputes

The fifth prehearing conference in this docket was held on January 13 and 14, 1986 for the purpose of considering pending discovery disputes and motions. The confidentiality issues argued on January 13, 1986, and the issues pertaining to GSU's RFIs to various parties argued on January 14, 1986, will be ruled on by subsequent order. Disputes concerning various parties' RFI's to GSU, argued on January 14, 1986, are resolved herein. At the prehearing conference on January 14, 1986, appearances were entered by George Avery for GSU, Peter Brickfield for North Star Steel, Walter Washington for OPC, Steven A. Porter for numerous cities (the Cities), W. Scott McCollough of the Attorney General's Office for certain state agencies and Alfred R. Herrera of the Commission's General Counsel Office for the public interest.

A. Cities' RFIs

All of the RFIs referenced in GSU's request for prehearing conference dated January 2, 1986, concerning the Cities' Fourth RFI, were resolved except Questions A-199 and A-208. After argument, counsel for GSU and the Cities agreed to continue to negotiate regarding Question A-208. Question A-199 requested the payroll per employee by utility for each Texas and Louisiana utility contained in an EEI survey in the utility's possession. GSU objected on grounds of relevance and confidentiality. Mr. Avery indicated that GSU did not have the necessary breakdown but could get it from EEI. Mr. Porter indicated that it would be acceptable to the Cities if GSU provided the average salary per employee without naming the individual utilities (referring to Utility A, Utility B, etc.) and without indicating whether the utility is in Texas or Louisiana. GSU's objections are OVERRULED. GSU SHALL provide the requested information, along the lines described above as being acceptable to the Cities, within five working days after the date of this order.

B. OPC's RFIs

Of the RFIs referenced in GSU's request for prehearing conference filed on January 6, 1986, concerning OPC's Seventh RFI, the only one still in dispute was Q-308(A)(a). This requested certain River Bend audits and reports. GSU objected that the RFI requested information which was so voluminous that GSU should not be required to copy it and make it available in Austin as well as in Beaumont. Mr. Avery indicated that the documents were approximately one foot in width. GSU's objection is OVERRULED. GSU shall make a copy available in Austin as soon as possible and no later than five working days after the date of this order.

The parties agreed to defer to the next prehearing conference the RFIs referenced in GSU's request for prehearing conference filed on January 9, 1986, which concerned OPC's Eighth RFI.

C. General Counsel's RFIs

Of the RFIs referenced in GSU's request for prehearing conference filed on January 3, 1986 concerning general counsel's Ninth RFI, the only one still in dispute was Question Meredith 13. This question requested the following information respecting GSU personnel associated with prudence review: name of employee, annual wage, department and percentage of time worked applicable to prudence review. GSU objected on two grounds: first, that "GSU personnel associated with prudence review" is too vague, and second, that the requested information is confidential. The objection indicates that GSU will provide wage information for classes of employees once the RFI is clarified. Mr. Herrera stated that it was acceptable to general counsel not to state the name of the employee, and to state only the class of employee (such as secretary or clerk),

the department and the product of the columns "annual wage" and "percentage of time worked applicable to prudency review" (for example, \$20,000 x .50 = \$10,000; \$40,000 x .25 = \$10,000; in each case GSU would only indicate \$10,000 for that employee). In a January 14, 1985 filing, pursuant to the examiner's request at the prehearing conference, Mr. Herrera indicated that the term "prudency review" refers to the use of that term in a GSU document in the rate filing package, specifically Vol. 1 of the revised CWIP filing, Tab PA-13, workpaper PA 85-13 1985 p.2. GSU's objection is OVERRULED. GSU shall supply the requested information, within the guidelines indicated above as acceptable to general counsel, within five working days after the date of this order. GSU shall interpret the term "prudency review" to have the same meaning as that GSU had in mind when it used that term in estimating the costs described in the referenced GSU workpaper.

SIGNED AT AUSTIN, TEXAS on this the 14th day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

nsh

RECEIVED

PUBLIC UTILITY COMMISSION
1986 JAN -9 PM 1:35
P.O. OF TEXAS
AUSTININQUIRY OF THE PUBLIC UTILITY
COMMISSION OF TEXAS CONCERNING THE
FIXED FUEL FACTOR OF GULF STATES
UTILITIES COMPANYAPPLICATION OF GULF STATES UTILITIES
COMPANY FOR AUTHORITY TO CHANGE RATESORDER NO. 16
ORDER CONCERNING PROCEDURES FOR
DETERMINING WHETHER OR NOT DISCOVERY MATERIALS
ARE PROTECTED FROM PUBLIC DISCLOSURE

In open meeting on January 8, 1986, the Commission granted the Cities' appeal of the portion of Order No. 14 which approved a protective order stipulated to by a number of parties, and dissolved the protective order, indicating that a protective order is not to be issued until there is a finding that documents are protected from public disclosure. This leaves unresolved the question of whether or not any documents claimed by Gulf States Utilities Company (GSU) to be protected in fact are protected. On January 3, 1986, the Office of Public Utility Counsel (OPC) filed a request for a ruling that the documents claimed by GSU to be protected are not protected. As indicated at the January 8, 1986 open meeting, the issue of whether or not any documents requested in discovery to date, and claimed by GSU on or before Thursday, January 9, 1986, to be protected from public disclosure but available to the parties under an appropriate protective order, will be taken up at the prehearing conference scheduled for Monday, January 13, 1986. Also as indicated at that open meeting, GSU shall file a statement indicating with specificity each document or part thereof claimed to be so protected, and GSU's grounds for claiming such protection, including legal authority, if any. This shall be filed no later than 4:00 p.m. on Friday, January 10, 1986. Finally, GSU shall be prepared to make available to the examiner for in camera inspection, if necessary, documents claimed to be so protected. Any parties which believe that some documents claimed by GSU to be protected are in the public domain are urged to communicate this to GSU as soon as possible.

The following shall be the procedures for processing claims by a party that requests for information (RFIs) directed to that party request documents or information which that party alleges are protected from public disclosure but will be made available to the parties pursuant to an appropriate protective order. The party shall, within five days after receipt of the RFI, file a request for a prehearing conference, stating with specificity the RFIs in question and the grounds for the claim of protection, including legal authority, if any.

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

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

DOCKET NOS. 6477 and 6525

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

ORDER NO. 15

NOTICE OF FIFTH PREHEARING CONFERENCE AND
ORDER RULING ON DISCOVERY DISPUTES AND MOTIONS
RELATING THERETO, MOTIONS TO CONSOLIDATE
CITY APPEALS, MOTIONS TO GROUP STATE AGENCIES AND
SYNPOL's MOTION TO WITHDRAW INTERVENTION

I. Notice of Fifth Prehearing Conference

Pursuant to Order No. 4, on January 2, 1986, Gulf States Utilities Company (GSU), numerous cities and the Office of Public Utility Counsel (OPC) filed requests for a prehearing conference to resolve disputed requests for information (RFIs).

Pursuant to P.U.C. PROC. R. 21.83, a fifth prehearing conference will be conducted herein on Monday, January 13, 1986, beginning at 1:30 p.m. at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas. The following matters will be considered at the prehearing conference:

1. The discovery disputes referenced in GSU's request and any other request or motion filed with the Commission and served upon the parties on or before noon on Thursday, January 9, 1986; and
2. Any other matters which may aid in the simplification of the proceedings and the disposition of any issues in controversy including the stipulation of uncontested matters.

The parties are urged to continue their best efforts to resolve the above and any other discovery disputes.

II. Discovery Disputes

The fourth prehearing conference in this docket was held on January 3, 1986 for the purpose of considering pending discovery disputes and motions. Appearances were entered by George Avery for GSU, Ralph Gonzalez for Texas Industrial Energy Consumers (TIEC), Walter Washington for OPC, Steven A. Porter for numerous cities (the Cities), and Alfred R. Herrera of the Commission's general counsel's office for the Commission staff and the public interest.

The parties agreed to defer to the next prehearing conference the RFIs referenced in GSU's request for prehearing conference filed on December 30, 1985, so that the parties could negotiate and so that all objections to GSU's RFIS to other parties could be considered simultaneously.

Of the requests for prehearing conference filed on December 12, 1985, December 16, 1985, and December 19, 1985, only one question remained in dispute. That question is the first question from Nat Treadway on general counsel's fifth RFI to GSU. GSU objected to the part of that question which requested information pertaining to all end user conservation and load management programs considered and rejected by GSU. GSU objected on grounds of relevance, stating that P.U.C. SUBST. R. 23.22(c) sets forth the information concerning energy efficiency GSU is required to provide. GSU also objected that it would be impractical to respond, in that GSU has not retained records concerning programs considered and rejected by its personnel. General counsel responded that the RFI requests documents which contain or are reasonably calculated to lead to the discovery of relevant information. General counsel also observed that P.U.C. SUBST. R. 23.22(b)(1) provides that an energy efficiency plan must indicate the rationale for selecting the chosen set of programs. GSU's objection is OVERRULED. GSU shall respond to the RFI to the extent possible given the present state of its records and its employees' knowledge and recollection. Where documentation has not been made or retained, GSU shall so indicate to the extent possible given the present state of its records and its employees' knowledge and recollection. GSU's response shall be served on general counsel no later than Monday, January 13, 1986.

III. Pending Motions Relating to Discovery

On December 20, 1985, the State Agencies filed a request that their objections to GSU's RFI to intervenors not be heard at the prehearing conference since counsel for the State Agencies would be out of town. This motion was granted without objection.

On December 30, 1985, Montgomery County filed a request for extension of time to file its responses to GSU's RFI to intervenors. GSU requested that consideration of that motion be delayed to enable the parties to negotiate. Since only GSU could be hurt by the delay and none of the parties present objected, GSU's request was granted.

IV. Motions to Consolidate City Appeals

On December 2, 1985, GSU filed an appeal from the decision of the City of Montgomery. On December 3, 1985, GSU filed an amended appeal from the decision of the City of Riverside. These cities had denied GSU's request for a rate increase. With the appeals were motions to consolidate such appeals 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.

V. Motions to Group State Agencies and State Treasurer
for Purposes of Service of Documents

On December 9, 1985, GSU filed a response to the State Treasurer's motion to intervene requesting that service on the Attorney General fulfill the service requirement as regards the State Treasurer. No objections to this request have been filed. GSU's request is hereby GRANTED.

VI. SYNPOL's Motion to Withdraw its Intervention

On January 2, 1986, SYNPOL, Inc. filed a letter request to withdraw its intervention in these cases. SYNPOL's request is hereby GRANTED.

SIGNED AT AUSTIN, TEXAS on this the 3rd day of January 1986.

PUBLIC UTILITY COMMISSION OF TEXAS


ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

nsh

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DOCKET NOS. 6477 AND 6525

RECEIVED

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

1985 DEC 16 PM 4:37
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF GULF STATES UTILITIES
COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 14

NOTICE OF FOURTH PREHEARING CONFERENCE AND
ORDER RULING ON DISCOVERY DISPUTE, ADOPTING
PROPOSED PROTECTIVE ORDER, DENYING GROUPING OF
SYNPOL AND TIEC FOR PURPOSES OF SERVING DOCUMENTS,
GRANTING MOTIONS TO CONSOLIDATE CITY APPEALS AND
GRANTING STATE TREASURER'S MOTION TO INTERVENE

I. Notice of Fourth Prehearing Conference

Pursuant to Order No. 4, on December 12, 1985, Gulf States Utilities Company (GSU) filed a request for a prehearing conference to resolve disputed requests for informations (RFIs).

Pursuant to P.U.C. PROC. R. 21.83, a fourth prehearing conference will be conducted herein on Friday, January 3, 1986, beginning at 9:00 a.m. at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas. The following matters will be considered at the prehearing conference:

1. The discovery disputes referenced in GSU's request and any other request or motion filed with the Commission and served upon the parties on or before noon on Tuesday, December 31, 1985; and
2. Any other matters which may aid in the simplification of the proceedings and the disposition of any issues in controversy including the stipulation of uncontested matters.

The parties are urged to continue their best efforts to resolve the above and any other discovery disputes.

II. Discovery Dispute

The third prehearing conference in this docket was held on December 13, 1985, for the purpose of considering pending discovery disputes and the motion of GSU for adoption of a proposed protective order. The proposed Order is attached as Exhibit A. Appearances were entered by George Avery for GSU, Ralph Gonzalez for Texas Industrial Energy Consumers (TIEC), W. Scott McCollough for the State Agencies, Jim Boyle for the Office of Public Utility Counsel (OPC), Steven A. Porter for numerous cities (the Cities), William H. Yoes for the Cities of Nome, Sour Lake and China, and Alfred R. Herrera of the Commission's general counsel's office for the Commission staff and the public interest.

Of the RFIs referred to in GSU's requests for prehearing conference filed on December 2, 1985 and December 6, 1985, the only one still in dispute was Question D-19 of the Cities' Second RFI to GSU. That RFI requests copies of all periodic, e.g. weekly, monthly, etc., documents and communications prepared for internal distribution at the vice presidential level and above which include any evaluation of the financial performance and position of GSU.

GSU objected to this RFI on two grounds. First, GSU argued that the RFI seeks copies of internal documents that may be protected from disclosure by the attorney work product or investigative work product doctrines. Second, GSU argued that the RFI is global, overly broad and burdensome, in that it requires some reasonable limitation on the phrases "documents and communications" and "evaluation of the financial performance and position of GSU".

Mr. Porter argued that he could not imagine how the work product privilege might apply. He stated that all the Cities want are periodic memoranda or reports internally prepared and circulated at the high level which contain financial indicators as opposed to, for example, balance sheets or engineering reports, or which evaluate the financial performance or condition of GSU.

Mr. Avery argued that GSU has not specifically identified which, if any, documents might be privileged because it had been unable to ascertain what documents are within the scope of the RFI. GSU is asserting a right to withhold a portion of a document within the scope of the RFI if it contains, for example, a privileged communication from a GSU attorney official or employee to GSU management. GSU knows what "documents" are; it is confused as to the meaning of "communications".

Mr. Avery and Mr. Porter agreed that the time period covered by the RFI is from the beginning of the test year forward. Mr. Avery indicated that with that constraint, the documents requested are not voluminous.

GSU's objection is OVERRULED IN PART. GSU shall provide all materials and portions thereof covered by the RFI, with the following limitations. First, the RFI will be interpreted to refer to documents and other written communications, including studies and memoranda, which materials are prepared on a periodic basis such as weekly or monthly for internal distribution within GSU at the vice presidential level or above. Second, GSU need not provide such materials if they were completed or dated before the beginning of the test year. Third, GSU need only provide such materials if they either contain financial indicators for GSU, or contain one or more sentences or portions thereof which evaluates, (meaning describes, interprets or attempts to predict) the financial condition or performance of GSU. Fourth, GSU may withhold portions of such materials to the extent that it positively avers all of the following: (1) that the withheld portion contains the identity, mental impressions and opinions of an expert who has been informally consulted or retained or specially employed by GSU in anticipation

of litigation of or preparation for this proceeding; (2) that the expert will not be called as a GSU witness; and (3) that the expert's work product does not form a basis in whole or in part of the opinions of a GSU expert witness. If GSU withholds any portions of materials in compliance with this part of this Order and later decides to call an expert rebuttal witness which decision changes the matters averred with respect to one or more of the withheld portions, GSU shall supplement its response by providing such portions. This shall be done by the earliest of the following dates: within five working days after GSU decides that the expert will present rebuttal testimony for GSU, or within five working days after intervenor direct testimony is prefiled if the witness is rebutting such testimony, or within five working days after staff direct testimony is prefiled if the witness is rebutting only staff testimony. In addition, GSU may withhold portions of such materials if it positively avers that the portion withheld constitutes or contains advice to GSU from its attorneys in connection with providing to GSU professional legal services concerning this proceeding.

The examiner can understand how GSU might have had difficulty answering this RFI before it was clarified. GSU shall answer the RFI in accordance with this order by no later than Friday, December 27, 1985.

III. Protective Order

At the prehearing conference, argument also was heard on GSU's motion for adoption of proposed protective order. This motion was supported by GSU, TIEC, North Star Steel, OPC and the staff and opposed by the Cities and the State Agencies. With one exception, the Cities and the State Agencies did not oppose the language of the proposed Order, but rather the concept of such an Order. The exception is that Mr. Porter was concerned that under Paragraph 11 of the proposed Order, the burden might be on the party requesting discovery to specifically identify documents that should not be protected.

The examiner has reviewed the proposed Order and is of the opinion that it appropriately protects the rights of the parties and is in the public interest. The proposed Order is hereby ADOPTED and incorporated in this Order. As agreed by GSU at the prehearing conference, GSU SHALL supplement Attachment A to the protective order indicating the specific documents sought to be protected and grounds for protection alleged by GSU with five working days after receiving an RFI requesting such documents.

IV. Grouping of SYNPOL with TIEC

On November 25, 1985, GSU filed a response to SYNPOL, Inc.'s (SYNPOL) motion to intervene. GSU did not object to the intervention but requested that SYNPOL be grouped with TIEC for purpose of service of materials. On December 10, 1985, TIEC objected on the ground that SYNPOL is not a member of TIEC and that TIEC's attorneys do not represent SYNPOL. GSU's request is hereby DENIED.

V. Motions to Consolidate City Appeals

On November 15, 1985, GSU filed an appeal from the decisions of the Cities of Devers, Woodbranch and Riverside. On November 19, 1985, GSU filed an appeal from the decision of the City of New Waverly. On November 25, 1985, GSU filed an appeal from the decisions of the Cities of Cleveland, Trinity, Normangee, and Todd Mission. These cities had all denied GSU's request for a rate increase. With the appeals were motions to consolidate such appeals with the present case. On December 3, 1985, GSU filed an amended appeal from the decision of the City of Riverside. The City of Riverside's address had to be corrected. 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, except for the motion concerning the City of Riverside, are hereby GRANTED. The motion concerning the City of Riverside will be ruled on when sufficient time has elapsed in accordance with Order No. 4.

VI. Motion to Intervene

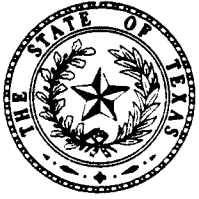
On December 2, 1985, Ann W. Richards, Treasurer of the State of Texas (the State Treasurer), by and through the Attorney General of the State of Texas, filed a motion to intervene. The State Treasurer intervened solely for the purposes of ensuring that unclaimed fuel cost overrecovery refunds are distributed in accordance with law. Although the motion to intervene was untimely, no objections have been filed. On December 9, 1985, GSU filed a response stating that GSU does not contest the State Treasurer's intervention, so long as it is limited to the refund issue. GSU stated that it reserved the right to challenge any broader participation by the State Treasurer. GSU requested that service by GSU on the Attorney General fulfill the service requirement as regards the State Treasurer. This request will be taken under advisement pending a response time as set forth in Order No. 4.

The State Treasurer's motion to intervene is hereby GRANTED.

SIGNED AT AUSTIN, TEXAS on this the 16th day of December 1985.

PUBLIC UTILITY COMMISSION OF TEXAS


ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE



Public Utility Commission of Texas

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

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1987 JAN 22 PM 1:56

PUBLIC UTILITY COMMISSION
FILING CLERK

Peggy Rosson
Chairman

Dennis L. Thomas
Commissioner

Jo Campbell
Commissioner

January 22, 1987

TO ALL PARTIES OF RECORD

Re: Consolidated Docket Nos. 6477, 6525, 6660, 6748 and 6842 -- GSU

Dear Sir or Madam:

We have completed preparation of the appeals record to be sent to court in this case. Unfortunately, the copies of State Agencies Exhibit Nos. 62 through 68 which were marked by the court reporter are missing. Attached are copies of my copies of those exhibits, with a note explaining why they have been substituted for the court reporter's copies. We are including the original of the attached copies in the appeals record being sent to the court. Please check the attached copies against your records, and if you have a problem concerning this substitution, please let me know. I apologize for this problem.

Sincerely,

Elizabeth Hagan Drews

Elizabeth Hagan Drews
Administrative Law Judge

Attachments

sb

GULF STATES UTILITIES COMPANY
TEXAS RATE CASE
DOCKET NO. 6477, 6525 and 6660

RESPONSE TO FOURTH
REQUEST OF ATTORNEY
GENERAL OF THE STATE
OF TEXAS

Addendum #1

Question: 3.

Provide the actual total and class consumption for all customers, during the month for which consumption was used to calculate refunds, so as to allow a comparison with GSU's projected total consumption and class consumption in its most recent fuel filing and supporting documentation.

Response:

See attached.

Prepared by: Judith Moses, Manager - Rates

Sponsored by: Judith Moses, Manager - Rates

DKT # 6477, 6525, 6660, 6748, 6842, GSU.
State Agencies EX # 62

DATE _____ BY *

* ADMITTED 7/10/86.
EXHIBIT LOST. THIS IS EXAMINER'S
COPY. PARTIES NOTIFIED OF THIS
BY LETTER DATED 1/22/87, WITH
COPY OF EXHIBIT ATTACHED.
END

GULF STATES UTILITIES COMPANY
 TEXAS RATE CASE
 Docket Nos. 6477, 6525 and 6660
Actual Texas Retail KWH Sales By Voltage Level Within Rate Class

Rate Class	April 1986 Actual KWH					Total
	Secondary	Primary	34.5KV	69KV	138KV	230KV
RS	170,158,346	--	--	--	--	--
SGS	8,564,333	--	--	--	--	--
GS	137,923,595	15,268,535	1,047,475	1,095,480	--	--
LCS	12,266,540	23,523,150	1,763,125	533,000	799,200	--
LPS	--	6,045,876	6,730,862	85,135,064	--	--
LIS	--	--	--	148,114,954	33,911,424	41,020,000
S&OL	4,959,109	--	--	--	158,883,010	--
Total	333,871,923	44,837,561	9,541,462	234,878,498	193,593,634	41,020,000
						857,743,078

Note: April 1986 actual KWH were basis for refunds made to all voltage levels except 69KV, 138KV and 230KV which were made on historical KWH for the refund period.

GULF STATES UTILITIES COMPANY
TEXAS RATE CASE
DOCKET NO. 6477, 6525 6660

RESPONSE TO FOURTH
REQUEST OF ATTORNEY
GENERAL OF THE STATE
OF TEXAS

Question: 4.

Has GSU performed any analysis of the relative precision of the projected usage levels used to calculate the refund factors in light of actual usage? If so, please provide a copy of such analysis, along with all correspondence, notes, memoranda, backup data, or other materials responsive to this RFI.

Response:

No.

Prepared by: B. W. Dorsey - Supervisor of Load and
Energy Forecasting

Sponsored by: Judith Moses, Manager - Rates

DKT # 6477, 6525, 6660, 6748, 6842, GSU
State Agencies EX # 63

DATE _____ BY *

* ADMITTED 7/10/86.

EXHIBIT LOST. THIS IS EXAMINER'S
COPY. PARTIES NOTIFIED OF THIS
BY LETTER DATED 1/22/87, WITH
COPY OF EXHIBIT ATTACHED.
END

GULF STATES UTILITIES COMPANY
TEXAS RATE CASE
DOCKET NO. 6477, 6525 and 6660

RESPONSE TO FOURTH
REQUEST OF ATTORNEY
GENERAL OF THE STATE
OF TEXAS

Question: 5.

Has GSU attempted to make any comparison between refunds given to distribution level customers under the new fuel rule and the amount they were actually overcharged? Please provide all correspondence, notes, memoranda, backup data, or other materials responsive to this RFI.

Response:

No.

Prepared by: Judith Moses, Manager - Rates

Sponsored by: Judith Moses, Manager - Rates

DKT # 6477, 6525, 6660, 6748, 6842, GSU.
State Agencies EX # 64

DATE _____ BY *

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END

GULF STATES UTILITIES COMPANY
TEXAS RATE CASE
DOCKET NO. 6477, 6525 and 6660

RESPONSE TO FOURTH
REQUEST OF ATTORNEY
GENERAL OF THE STATE
OF TEXAS

Question: 6.

Did GSU make any refunds to transmission level customers that were on the system during the overcharge period, but not during the refund month? If the answer is yes, please indicate the number of such customers and the amount of refund to each such customer.

Response:

No.

Prepared by: Judith Moses, Manager - Rates

Sponsored by: Judith Moses, Manager - Rates

DKT # 6477, 6525, 6660, 6748, 6842, G84.
State Agencies EX # 65

DATE _____ BY JK

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RESPONSE TO FOURTH
REQUEST OF ATTORNEY
GENERAL OF THE STATE
OF TEXAS

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/or specific information that would be
this RFI.

lager - Rates

lager - Rates

DRT # 6477, 6525, 6660, 6748, 6842, 6844.

State Agencies EX # 666

DATE _____ BY *

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GULF STATES UTILITIES COMPANY
TEXAS RATE CASE
DOCKET NO. 6477, 6525 and 6660

RESPONSE TO FOURTH
REQUEST OF ATTORNEY
GENERAL OF THE STATE
OF TEXAS

Question: 8.

Did GSU make any refunds to distribution level customers that were not on the system during the overcharge period, but were during the refund month? If the answer is yes, please indicate the number of such customers and the amount of refund to each such customer. If GSU cannot identify the number of such customers or the amount of refund to each such customer, please fully explain why not, and indicate the specific problems and/or specific information that would be needed to respond to this RFI.

Response:

GSU is making refunds to distribution level customers who are taking service during the refund month of April, in accordance with the PUCT rule. No attempt has been made to determine if those customers receiving a refund were taking service during the overcharge period. To identify those customers, if any, receiving a refund who were not taking service during the over-recovery period would involve an analysis of approximately 270,000 customers to determine when they began taking service from GSU and if their service address had changed during the over-recovery period.

Prepared by: Judith Moses, Manager - Rates

Sponsored by: Judith Moses, Manager - Rates

DKT # 6477, 6525, 6660, 6748, 6842, 6844

State Agencies EX # 67

DATE _____ BY *

* ADMITTED 7/10/86.

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END

GULF STATES UTILITIES COMPANY
TEXAS RATE CASE
DOCKET NO. 6525

RESPONSE TO FOURTH DATA
REQUEST OF ATTORNEY GENERAL
ADDENDUM NO. 1

Question 15: What line losses did GSU use for purposes of complying with PUC Subst. R. (Emerg.) 23.23? Please provide all materials used to calculate or identify the line losses used, including any and all studies, notes, memoranda, data and backup.

Response: The line losses used by Gulf States are reflected on page 3 in the attached order in Docket No. 5560. As indicated there the line loss multipliers recommended by North Star Steel were adopted by the Commission. Also included is a copy of pages 131 through 133 of the Examiner's Report in Docket 5560 which includes the Examiner's discussion of the selection of loss multipliers. As these factors were not proposed by Gulf States it did not prepare any studies or memoranda to support them.

DKT # 6477, 6525, 6660, 6748, 6842, GSU.

State Agencies EX # 68

DATE _____ BY *

* ADMITTED 7/10/86.

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THIS BY LETTER DATED
1/22/87, WITH COPY OF
EXHIBIT ATTACHED.

END

Prepared by: Judith Moses, Manager - Rates
Sponsored by: Judith Moses, Manager - Rates

APPLICATION OF GULF STATES
UTILITIES COMPANY FOR AUTHORITY
TO CHANGE RATES.

PUBLIC UTILITY COMMISSION
OF TEXAS

ORDER

In a public meeting at its offices in Austin, Texas, the Public Utility Commission of Texas finds that, after statutory notice was provided to the public and interested persons, the application in this case was processed by examiners in accordance with Commission rules and all applicable statutes. An Examiner's Report containing Findings of Fact and Conclusions of Law was submitted, which report is hereby ADOPTED with the following changes and made a part of this Order.

The following changes or additions are made to the Findings of Fact:

34. The rate base adjustments recommended by the examiner and used in deriving Finding of Fact No. 35, with the CWIP amount as modified by the Commission, are reasonable for the reasons stated in this Report.

35. GSU's invested capital is valued at \$2,616,969,407 as shown below:

Plant in Service	\$2,703,173,137
Accumulated Depreciation	<u>(805,932,331)</u>
Net Plant	\$1,897,240,806
Construction Work in Progress	658,337,500
Property Held for Future Use	1,911,789
River Bend II Cancellation Loss	0
Working Cash Allowance	15,721,020
Materials and Supplies	16,514,773
Prepayments	3,240,118
Fuel Inventory	44,478,000
LESS	
Deferred Taxes	192,454,976
Pre-1971 Investment Tax Credits	5,963,256
Customers' Deposits	10,764,864
Property Insurance Reserve	900,224
Damages and Injuries	1,608,635
Management Incentive Compensation	<u>8,471,984</u>
Total Invested Capital	\$2,616,969,407

36. Inclusion in GSU's rate base of 50 percent of the CWIP level recommended by TML witness Johnson is necessary to the Company's financial integrity for the reasons described in this Report.

37. For the purpose of computing a fair return on GSU's invested capital the following capital costs and capital structure are appropriate:

	<u>Amount</u>	<u>Percentage</u>	<u>Cost</u>	<u>Weighted Cost</u>
Long-Term Debt	\$1,038,337	29.47%	11.64%	5.76%
Preferred and Preference Stock	483,630	12.34%	11.56%	1.43%
Common Equity	1,334,292	34.06%	16.25%	5.53%
ITCs	161,693	4.13%	13.27%	.55%
	<u>\$3,917,947</u>	<u>100.00%</u>		<u>13.27%</u>

39. The most accurate values in this record for D_1 and P , are \$1.66 and \$13.91, and result in a dividend yield ($D_1 + P$) of 11.93 percent. For the reasons set out in the report, application of a 1.05 market to book adjustment to the dividend yield is appropriate. The most reliable figure for g inferable from the testimony is 4.0 percent.

40. A return on common equity of 16.25 percent which is the midpoint of TML witness Lattner's recommended return on equity of 16.0 to 16.5 is reasonable for GSU. An annual return of \$347,271,840, which constitutes a 13.27 percent return on GSU's invested capital, is fair and reasonable; is adequate under efficient management to allow GSU to maintain its current credit and to attract the capital necessary for the proper discharge of its duties as a public utility, and is sufficient to insure adequate financial integrity.

52. GSU failed to prove that the costs of coal car lease payments and use tax accruals should be included in those fuel costs which are subject to reconciliation.

54. The use of a coal car maintenance reserve reduces fluctuations in income and matches the expenses incurred with the events causing them. GSU's treatment of coal car maintenance expense is based upon detailed studies. It is therefore reasonable to allow this accounting treatment of coal car maintenance expenses to continue until GSU's next rate case.

55A. Only the actual test year operations and maintenance expense attributable to Nelson 7 should be included in the cost of service, as recommended by staff witness Bryant, because GSU's requested adjustment is not known and measurable.

58. The preponderance of the evidence supports a finding that the approximate 22 percent increase in total W-2 compensation paid to GSU's top executive officers between 1992 and 1993 is unreasonable. It is reasonable to adopt one-half of OPC's proposed reduction of \$659,655.

92. GSU's proposed optional time-of-use rates were all developed based upon a time of use allocation that is similar to the average and excess allocation method. Nevertheless, it would be reasonable to retain GSU's present LIS-TOU and LPS-TOU rate structures, as proposed by TIEC witness Pollock, because GSU's proposal makes these time-of-use rates undesirable for high load factor customers.

The following changes are made to the Conclusion of Law:

9. GSU has met its P.U.R.A. Section 40 burden of proof to establish that it has a revenue deficiency for retail electric utility service and is entitled to raise its rates to recover the revenue requirement recommended in this Examiner's Report, as modified by the Commission.

10. The examiner's recommendations herein, as modified by the Commission, will allow GSU to recover its reasonable and proper operating expenses together with a reasonable opportunity to earn a reasonable return on its invested capital pursuant to P.U.R.A. Section 39.

14. Inclusion in GSU's rate base of 50 percent of the adjusted CWIP amount recommended by TML witness Johnson is necessary to GSU's financial integrity within the meaning of P.U.R.A. Section 41(a).

30. The revenue requirement recommended in this Examiner's Report, as modified by the Commission, will provide GSU with a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses, as required by P.U.R.A. Section 39(a) and P.U.C. SUBST. R. 23.21 and 23.23.

The Commission further issues the following Order:

1. The application of Gulf States Utilities Company (GSU) is hereby GRANTED in part and DENIED in part, as set out in the Examiner's Report and modified by this Order.
2. GSU SHALL inform this Commission in writing not less than twelve months before the filing of a rate case in which it intends to include River Bend Nuclear Unit 1 in rate base.
3. GSU SHALL file revised rate schedules in accordance with the rates and guidelines set out in the Examiner's Report sufficient to generate revenues not greater than those prescribed in the report. GSU shall also file any other pages of its tariff that are being revised pursuant to this docket. The revised tariff sheets shall be filed in four (4) copies with the Commission Filing Clerk and shall comply with

the requirements of P.U.C. SUBST. R. 23.24. GSU shall serve a copy of its revised tariff on all parties of record at the same time that it is filed with the Commission. The parties shall have ten (10) days from the date of filing to present their written objections to the revised tariff, if any, to the Commission staff for its review and consideration. The Commission staff shall have twenty (20) days from the date of the filing of the revised tariff to review it for approval or rejection. The tariff shall be deemed to be approved and shall become effective upon the expiration of twenty (20) days after filing or sooner upon notification by the examiner. In the event of rejection, GSU shall be notified by the examiner, with a copy sent to all parties, and it shall have fifteen (15) additional days to file another revised tariff, with the same procedures then to be repeated.

4. The revised and approved rates shall be charged only for service rendered in areas over which this Commission was exercising its original or appellate jurisdiction as of the adjournment of the hearing on the merits herein, and said rates may be charged only for service rendered after the tariff approval date. Should the tariff approval date fall within the utility's billing period, the utility shall be authorized to prorate each customer's bill to reflect that customer's customer charge, demand charge, and daily energy consumption at the appropriate new rates.
5. GSU SHALL use the depreciation rates set out in the Examiner's Report for all regulatory purposes until further Order of this Commission.
6. In GSU's next rate case the Commission staff SHALL file testimony making alternative recommendations regarding the appropriate cost of service treatment of expenses for which reserve accounts presently exist, and testimony addressing the tracking approach to reconciliation of fuel costs.
7. This Order is deemed effective on the date of signing. Approval of the revised tariff filed in compliance with this Order shall be deemed to be final on the date of its effectiveness either by operation of this Order or by notification by the examiner, whichever occurs first.
8. All motions, applications, and requests for entry of specific Findings of Fact and Conclusions of Law and any other requests for relief, general or specific, if not expressly granted herein are DENIED for want of merit.
9. GSU may continue to charge its bonded rates until its tariff submitted in compliance with this Order is approved.

testimony, but rather during cross-examination of staff witness Neff and when staff witnesses Neff and Kepner were recalled at the conclusion of the hearing.

The staff subtracted the amount of over-recovery GSU had experienced as of January 31, 1984 from the staff's recommended fuel costs. (Staff Exhibit 18 (Neff) pg. 8 lines 5-8.) This amount was then flowed through the cost of service allocation as any other cost. The under-or over-recovery is rolled into the billing fuel factor to be used for system reconciliation purposes. (Tr. pg. 4033 lines 2-5.) This is done at the Texas retail level. (Tr. pg. 4035 lines 18-22; 4048 lines 20-23 and 4051 lines 11-12.) The under-or over-recovery is then to be allocated to the classes in the normal allocation of cost of service which recognizes the various line losses of the different classes. (Tr. pg. 4033 lines 20-25; and pg. 4043 line 22 through pg. 4044 line 1.).

One facet of the staff recommendation that seemed to cause the parties concern is that the under or over recovered fuel costs are not earmarked, but rather placed in a "pot of dollars." (Tr. pgs. 3537, lines 16-19; pg. 4039, lines 24-25.) According to Ms. Neff and Mr. Kepner it is impractical to precisely match the reconciliation to those customer classes which over- or under-paid. (Tr. pgs. 3542-3543; pg. 4047 lines 7-15.)

The examiner finds that staff's treatment of reconciliation is reasonable for this docket since it approximately matches the amount to be refunded or surcharged with the amount that was over-or under-recovered, without becoming unduly burdensome or impractical.

The examiner recommends, however, that in GSU's next rate case or fuel proceeding testimony should be filed addressing the tracking approach to reconciliation which was urged by North Star Steel in Section VIII of its brief. Under this approach a reconciliation component (or factor) would be calculated. The utility would then keep track of the extent to which the reconciliation has been accomplished over time. When the reconciliation is accomplished, the reconciliation component (or factor) would be dropped out of the base rate. In the event the desired reconciliation had not taken place by the time of a company's next filing, the remaining amount could be rolled into a new reconciliation component.

The fuel billing factor discussed in section VIII A. 2., supra, is used to calculate future over-or under- recoveries of fuel expense. (Tr. pg 3506 line 20-22; pg. 3507 lines 3-13, 3523 lines 4-8.)

B. Less Factor Multipliers

In designing its proposed rates, GSU implicitly included the fixed fuel factor in the energy charge rather than showing it as a separately stated

factor. As Mr. Edwards testified, there are actually two fuel factors built into the energy charges, reflecting the differences in relative line losses for the customer classes, separated into two groups. LPS and LIS customers comprise one group, with a loss factor multiplier of .970121. All other retail customers comprise the second group, with a loss factor multiplier of 1.043892. (GSU Exhibit 2 (Edwards), pgs. 23-24.) The Company's rationale in proposing only two factors was administrative efficiency. (Tr. pgs. 227, 229.)

North Star Steel witness Daniel recommended that loss multipliers should be developed for each delivery voltage. Mr. Daniel criticized the Company's proposal because of its inherent assumptions that all LPS and LIS customers receive service at the same voltage and that all other customers receive service at a lower voltage level. In actuality the LPS and LIS customers take service at different voltage levels, with the high being 230 kV and the low being primary distribution of 13.2 kV. The customers in the remaining rate classes also take service at different voltage levels, with the high being 138 kV and the low being secondary distribution. Therefore, under GSU's proposed loss multipliers, there will be subsidization between customers with regard to fuel charges. (North Star Exhibit 8 (Daniel), pgs. 15-17.)

Mr. Daniel proposed that the following loss multipliers be used in establishing the fuel cost component of base rates.

<u>Voltage Level</u>	<u>Loss Multiplier</u>
Secondary	1.048800
Primary	1.020298
34.5 kV	1.013759
69 kV	.969545
138 kV	.969551
230 kV	.961537

(North Star Exhibit 8, Schedule JWD-2.)

The PUC staff testimony originally did not provide for inclusion of line-loss factors to be applied to GSU's fuel factor. (Tr. pg. 4044, line 23 through pg. 4045 line 5). On being recalled to the stand, staff witness John Kepner proposed seven categories of line-loss factors, one for each customer class, rather than the Company's two categories. The change in the number of categories is the only difference between the final staff proposal and GSU's proposal. (Tr. pg. 4045, lines 2-6.) Under the staff proposal, all customers within a given class will have the same loss multiplier, which reflects average losses for the entire customer class. (Tr. pg. 4046.)

The staff's proposed line-loss factors are as follows:

<u>CLASS</u>	<u>LOSS MULTIPLIER</u>
Residential	1.040740
Small General Service	1.040742
General Service	1.033727
Large General Service	1.001836
LPS	.967374
LIS	.961155
Lighting	1.040745

The examiner recommends adoption of North Star's proposed loss factor multipliers. This proposal corresponds directly with the principle that underlies the use of a loss multiplier, which is that delivery at different voltage levels yields different line losses. North Star's proposal is explicitly recognized in P.U.C. Subst. R. 23.23(b)(2)(C)(ii) which permits utilities to design base rates that "(i) include seasonal differentiation of fuel costs, and (ii) account for system losses and for differences in line losses corresponding to voltage level of service." It is also similar in principle to the loss multiplier methodology adopted by the Commission in the Final Order in the TESCO fuel case, Docket No. 5294. Applying a single loss multiplier to each class yields grossly inequitable results when a class is composed of very high and low-voltage customers. North Star's proposal accurately reflects the line losses attributable to the various voltage levels at which service is provided, and should therefore be adopted. The billing factor (discussed in Section VIII. A. 2., supra) is multiplied by the loss multiplier to arrive at the energy charge.

C. Marginal Cost Pricing

In Docket No. 3437, styled Public Hearings of the Public Utility Commission of Texas on the Cost of Service Rate-making Standards of §111 (d)(1) of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601, et. seq., (August 20, 1991), this Commission was presented with voluminous testimony on the issue of marginal cost pricing. (TIEC Exhibit 15). The Examiner's Report in that docket, which was adopted by the Commission, stated as follows:

Accordingly, the panel recommends the continued use of average embedded cost studies as the basis for designing electric rates.

(TIEC Exhibit 15, pg. 12.)

Staff witness John Kepner testified in this proceeding that he did not agree with the above recommendation in the Examiner's Report in Docket No. 3437. (Tr. pg. 3243, lines 11-13.) Rather, Mr. Kepner proposed "an explicit acknowledgement of marginal costs as the place to begin in rate design." (Staff Exhibit 14, p. 4, lines 10-11.) Later in his testimony, Mr. Kepner stated that he would like to eventually design rates based on marginal capacity cost charges

BSN

Public Utility Commission of Texas

Memorandum

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TO: All Parties of Record
General Counsel

FROM: Elizabeth Drews, Administrative Law Judge

DATE: September 30, 1986

SUBJ: Docket Nos. 6477, 6525, 6660, 6748 and 6842, GSU

Elizabeth Drews

This is to notify you that the Commissioners voted by ballot not to add North Star Steel's motion to continue the Commission's consideration of a final order in this case to the agenda for the October 1, 1986, final order meeting. Therefore, the Commission is still scheduled to consider its final order in this case at its October 3, 1986, final order meeting, as discussed in the cover letter to the Examiner's Report.

nsh



Public Utility Commission of Texas

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

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Book
Reggie Rosson
Chairman

Dennis L. Thomas
Commissioner

Jo Campbell
Commissioner

December 27, 1985

TO ALL PARTIES OF RECORD

RE: Consolidated 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 Sir or Madam:

On December 12, 1985, Gulf States Utilities Company (GSU) filed a motion for rehearing of the Commission's December 2, 1985, Order dismissing the primary filing of GSU's application for authority to change rates. On December 17, 1985, the Office of Public Utility Counsel filed a motion for rehearing of the Commission's decision in the same order not to dismiss the entire application due to alleged use of stale test year data. These motions for rehearing will be considered by the Commission at an open meeting scheduled to begin at 9:00 a.m. on Wednesday, January 8, 1986, at the Commission offices, 7800 Shoal Creek Boulevard, Austin, Texas.

Pursuant to Commission Procedural Rule 21.143, requests for oral argument must be made in writing, filed with the Commission, and served on all parties by 5:00 p.m. on Thursday, January 3, 1986, (the fourth scheduled working day preceding the Final Order Meeting). If all parties are present at the Final Order Meeting, this requirement may be waived and oral argument heard at the Commissioners' discretion.

Your presence at the Final Order Meeting is not required, but you are welcome to attend if you wish. A copy of the signed Order will be mailed to you shortly after the Final Order Meeting.

If you have any questions or comments, please feel free to contact me at (512) 458-0264.

Sincerely,

Elizabeth Drews Miller
for Elizabeth Drews
Administrative Law Judge

m1



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

I, Rhonda Colbert Ryan, Secretary of the Public Utility Commission of Texas, certify that the enclosed are true and correct copies of the record in Public Utility Commission of Texas Docket Nos 6477 and 6525, Cause No. 391,982, 98th District Court of Travis County, Texas, styled General Electric Company vs. The Public Utility Commission of Texas. The record consists of the items listed on the attached index.

ISSUED UNDER MY HAND AND SEAL OF OFFICE this 7th day of March, 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SEAL


RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

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Sixth Prehearing Conference - January 24, 1986

Final Orders Meeting - January 29, 1986

Final Orders Meeting - February 6, 1986

Emergency Meeting to Consider Extension of Temporary
Protective Order - February 7, 1986



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

I, Rhonda Colbert Ryan, Secretary of the Public Utility Commission of Texas, certify that the enclosed are true and correct copies of the record in Public Utility Commission of Texas Docket Nos. 6477 and 6525, Cause No. 392,040, 299th District Court of Travis County, Texas, styled Gulf States Utilities Company vs. The Public Utility Commission of Texas.

The actual documents claimed to be confidential were sought in discovery by the parties and have not been filed or entered into evidence. They were reviewed in camera by the presiding Administrative Law Judge and the Commissioners, and then returned to Gulf States Utilities Company. They are not included in this appeal record. Also please note that part of the Commissioners' final orders meeting of February 6, 1986, was conducted in closed session, and pp. 92-95 of the transcript originally were placed under seal, since there were specific references to one of the documents claimed to be confidential, GSU's Strategic Marketing Plan. The Commission held that this document is not confidential, and ordered that it not be withheld from the public. This decision was not appealed from, and the document was disclosed. As a result, these transcript pages are no longer under seal. The record consists of the items listed on the attached index.

ISSUED UNDER MY HAND AND SEAL OF OFFICE this 6th day of March, 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SEAL

A handwritten signature in cursive script that reads "Rhonda Colbert Ryan".
RHONDA COLBERT RYAN
SECRETARY OF THE COMMISSION

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Official Notice - Rate Filing Package:
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III. Transcripts

Prehearing Conference - October 21, 1985
Final Orders Meeting - November 27, 1985
Motion for Rehearing - January 8, 1986

Public Utility Commission of Texas

105 FEB 12 PM 2:00

Memorandum

BSR

TO: All Parties of Record

FROM: Elizabeth Drews *Elizabeth Drews*

DATE: February 12, 1986

SUBJ: Docket Nos. 6477 and 6525, Gulf States Utilities

The Commissioners have voted to hear the appeals from my Order Number 21. (This order was originally designated as Number 20 and renumbered by Order Nunc Pro Tunc. Please try to refer to it as Order 21 to minimize confusion. The order concerns the escheat laws and the fuel refunds.) The appeals will be considered at the Open Meeting beginning at 9:00 a.m. on Wednesday, February 19, 1986, at the Commission's offices at 7800 Shoal Creek Blvd., Austin, Texas. Oral argument has been requested.

nsh

cc: general counsel

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

DEC 12 12:22
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING OF TEXAS

ORDER NO. 13

ORDER CONCERNING REQUEST
FOR PROTECTIVE ORDER

On December 11, 1985, GSU filed a motion for entry of a stipulated protective order, with a proposed Order attached. GSU stated that the proposed protective order has been agreed to by four of the six other active parties-the Commission staff, the Office of Public Utility Counsel (OPC), North Star Steel, and Texas Industrial Energy Consumers (TIEC). GSU alleged that further negotiations are unlikely to produce agreement to the proposed Order by the Texas Municipal League (TML) or the Attorney General (AG). GSU further stated that the proposed Order's protections will not be effective unless all active parties are subject to the Order. GSU asked that if a hearing on the motion is considered necessary, the motion should be taken up at the prehearing conference scheduled for December 13, 1985.

The examiner would like to enter an order resolving the discovery dispute as soon as possible. However, contrary to P.U.C. PROC. R. 21.5, no signed written agreement is attached to GSU's motion. Nor does the examiner know how she can distinguish between "active" and "inactive" parties or determine for herself what TML's or the AG's objections to the proposed Order are by entering an order without a hearing. Moreover, one can interpret GSU's motion to mean that GSU agrees to the Order only if all other parties are subject to it. All of these problems can be dealt with if the motion is taken up at the prehearing conference.

GSU's motion for protective order will be taken up at the prehearing conference on December 13, 1985. All parties opposed to such order or any terms thereof SHALL be prepared to state at that time what objections they have and what alternatives they would propose. The parties are directed to take steps to facilitate the rapid exchange of documents in the event the examiner decides to rule on the motion orally at the prehearing conference.

SIGNED AT AUSTIN, TEXAS on this the 12th day of December 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

DOCKET NOS. 6477, 6525, and 6564

DEC -3 PM 1:53

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 A RATE
INCREASE

PETITION FOR REVIEW AND COMPLAINT
OF GULF STATES UTILITIES COMPANY
AGAINST THE CITIES OF PORT NECHES,
ET AL.

PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

ORDER NO. 12 (DOCKET NOS. 6477 and 6525)

ORDER OF SEVERANCE AND CONSOLIDATION

On November 8, 1985, Gulf States Utilities Company (GSU) filed its Petition for Complaint and Review of certain ordinances adopted by the Cities of Pinehurst and Rose City on October 10, 1985. The ALJ consolidated that petition with Docket Nos. 6477 and 6525 in Order No. 9 signed on November 19, 1985. On December 4, 1985, Rose City moved that GSU's Petition for Review and Complaint against Rose City and Pinehurst be severed from Docket Nos. 6477 and 6525 and consolidated with Docket No. 6564.

GSU's Petition for Review and Complaint against Rose City and Pinehurst is identical in substance to its petition and complaint in controversy in Docket No. 6564. Pursuant to P.U.C. PROC. R. 21.85, GSU's Petition for Review and Complaint against Rose City and Pinehurst is hereby SEVERED from Docket Nos. 6477 and 6525 and CONSOLIDATED with Docket No. 6564. The ALJ and examiner find that the consolidated proceedings involve common questions of law and fact and that separate hearings would result in unwarranted expense, delay or substantial injustice.

GSU's Petition for Review and Complaint against the Cities of Rose City and Pinehurst is hereby incorporated into the official record in Docket No. 6564.

SIGNED AT AUSTIN, TEXAS on this the 5th day of December 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

Henry D. Card
HENRY D. CARD
HEARINGS EXAMINER

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

PUBLIC UTILITY COMMISSION

OFFICE OF TEXAS
PUBLIC UTILITY COMMISSION
FILING CLERK

APPLICATION OF GULF STATES UTILITIES
COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 11

ORDER RULING ON DISCOVERY DISPUTES

I. Discovery Disputes

As discussed in Order No. 10, the second prehearing conference was held in this docket on November 25, 1985, for the purpose of considering discovery disputes. Certain of the disputes argued at that prehearing conference were ruled on in Order No. 10. The remainder are ruled on in this Order. To the extent that objections have been overruled, responses to the RFI's are due as soon as possible and no later than five working days after the date of this order. As with all discovery disputes in this case, failure to comply with discovery ordered to be provided may subject the noncomplying party to sanctions such as those set out in TRCP Rule 215.2.b., including striking of pleadings or testimony.

A. OPC's First RFI, Question I-63

The Office of Public Utility Counsel's (OPC) First Request for Information (RFI) Question I-63 requests all studies or analyses prepared for GSU during the past 24 months which discuss the possible financial impact upon GSU of possible imprudence disallowances, phase-in proposals, failure to obtain operating licenses or other contingencies related to River Bend Nuclear Plant (River Bend). For convenience and clarity, the examiner has numbered and slightly rearranged GSU's objections to this RFI.

GSU objects to this entire RFI on the following grounds: (1) it is vague, ambiguous, overly broad and unreasonably burdensome; and (2) it calls for data which GSU will use as a basis for subsequent settlement discussions. These objections are OVERRULED. Regarding objection (1), at the prehearing conference, Jim Boyle for OPC stated that he wants not, for example, simple memoranda or letters, but rather actual studies, and specifically studies with financial runs that use financial data. As so clarified, the RFI is sufficiently definite. Regarding objection (2), under the Administrative Procedure and Texas Register Act (APTRA), Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1985 & 69th Legis. Sess. Laws ch. 570 at 4435), documents must be provided "subject to such limitations of the kind provided for discovery under the rules of Civil Procedure" (Section 14a(a)) and to the extent that such documents are "not privileged" (Section 14a(a)(1)). Rule 501 of the Texas Rules of Evidence (TRE) provides: "Except as otherwise provided by Constitution, by statute, by these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority, no person has a privilege to:... (2) refuse to disclose any matter; or (3) refuse to produce any object in writing;..." GSU cites no authority for the existence of the claimed privilege

for documents which will be a basis of subsequent settlement discussions, and the examiner is aware of none.

GSU also objected to providing specific studies. Its objection (3) is to providing an imprudence disallowance study prepared by GSU in response to a similar analysis by Mr. Sam Hadaway, a consultant for North Star Steel Texas, Inc. (North Star Steel). The objection states: "Gulf States believed that his study would be incorporated into his rate case testimony, and performed its analysis, after Mr. Hadaway reached his conclusions, for the sole purpose of preparing future rebuttal testimony." GSU objected that if OPC desires a copy of the analysis, it should contact Mr. Hadaway, the person who proposed and performed the original study and who provided it to the River Bend Task Force (the Task Force). This objection is **OVERRULED IN PART**. GSU shall produce a copy of each such study that is within GSU's possession, custody or control. (APTRA Section 14a(a)(1).) Thus GSU must produce the study if it is in GSU's physical possession, and even if not, if GSU has constructive possession, such that it has a superior right to compel the production of the study from a third party. (Texas Rules of Civil Procedure (TRCP) Rule 166b.2.b.) The latter would include a study performed for GSU by a consultant or other representative.

GSU's objection (4) is to studies requested by and provided to the Task Force of which OPC is a member. GSU stated that such studies are voluminous, but that GSU would allow OPC to review such studies at a mutually convenient time and place, subject to an appropriate protective order. GSU's objection (4) is **OVERRULED IN PART**. GSU shall make such studies available to OPC in Austin if OPC so requests and at a mutually convenient time which, if OPC so requests, shall be no later than five working days after the date of this Order. GSU provided no explanation or justification for imposing a protective order, so no such order is entered.

GSU's objection (5) is that it has not prepared or caused to be prepared a financial impact analysis of a possible failure to obtain an operating license for River Bend, and thus can provide no such analysis. This objection is **SUSTAINED**. Only studies GSU has prepared or caused to be prepared during the past 24 months are within the scope of the RFI.

GSU's objections (6) through (11) are to phase-in proposals which GSU stated were prepared both before and concurrent with the Task Force requests. GSU stated that these proposals were prepared at the direction and under the supervision of GSU's attorneys, working with GSU management, in anticipation of and preparation for litigation and were used to determine which phase-in plan to file.

GSU's objection (6) is that the phase-in alternatives considered and rejected by GSU are irrelevant. This objection is **OVERRULED**. The RFI requests documents which are within the standard set forth in APTRA Section 14a(a)(1), that they "constitute or contain, or are reasonably calculated to lead to the discovery of evidence material to any matter involved in the action."

GSU's objections (7) and (8) are that the some of the phase-in studies considered and rejected are based on speculative assumptions or were obtained from other utilities and were used so that GSU could review the format and structure of such proposals. These objections are OVERRULED. The examiner is aware of no authority under which these characteristics would exempt the documents from discovery, and GSU has cited her to none.

GSU's objection (9) is that OPC is as capable as GSU of preparing alternative phase-in studies. This objection is OVERRULED. This would not exempt studies from discovery which are in GSU's physical possession, custody or control within the meaning of TRCP 166.2.b.

GSU's objections (10) and (11) are that the phase-in proposals considered and rejected by GSU are protected from discovery under the work product doctrine or attorney-client privilege. These objections are OVERRULED IN PART. For each study requested, GSU shall produce such study or shall positively aver all of the following: (1) the study contains the identity, mental impressions or opinions of an expert whom GSU has informally consulted or retained or specially employed in anticipation of litigation of or preparation for this proceeding; (2) the expert will not be called as a GSU witness; and (3) such study does not form the basis either in whole or in part of the opinions of an expert who will be called as a GSU witness. A question arose at the prehearing conference as to who would be "an expert who will be called as a witness". Obviously, the category at present includes both all of GSU's witnesses who will provide direct testimony and any additional witnesses whom GSU now expects it will present as rebuttal witnesses. If GSU withholds any studies in compliance with this part of this Order and later decides to call an expert rebuttal witness who prepared one or more of the withheld studies, or for whom one or more of the withheld studies forms the basis either in whole or in part of the opinions of that expert, GSU shall supplement its response by providing such studies. This shall be done by the earliest of the following dates: within five working days after GSU decides that the expert will present rebuttal testimony for GSU, or within five working days after intervenor direct testimony is prefiled if the witness is rebutting such testimony, or within five working days after staff direct testimony is prefiled if the witness is rebutting only staff testimony.

B. Cities First RFI, Questions A-11 and A-12

Question A-11 requests a copy of all contracts relating to the clearing of vegetation from GSU's right-of-ways. Question A-112 requests a copy of the nuclear fuel base with Delta Fuel Services.

GSU objected to providing any such contracts except pursuant to a reasonable protective order. It argued that if the terms are made public, it will be harder for GSU to negotiate favorable terms and thereby keep costs down. The Cities objected to issuance of any blanket protective order.

GSU's objection is SUSTAINED. GSU shall submit within three working days of the date of the present order a proposed protective order covering the two contracts. The Cities shall then file a response indicating whether or not the Cities have problems with the proposed language and proposing and explaining the rationale for alternative language. GSU shall have three working days to respond, after which a protective order will be entered.

C. North Star Steel's First RFI, Instruction No. 5

Instruction 5 states that in the event GSU asserts that any requested information is not available in the form requested, GSU should disclose the following:

- (a) the form in which the requested data currently exists (identifying documents by title);
- (b) whether it is possible under any circumstances for GSU to provide the data in the form requested;
- (c) the procedures or calculation necessary to provide the data in the form requested;
- (d) the length of time (in hours or days) necessary for GSU to prepare the data in the form requested; and
- (e) the earliest dates, time period, and location that representatives of North Star may inspect GSU's files, records or documents in which the requested information currently exists.

GSU objected on the grounds that this instruction is unreasonable or unduly burdensome. North Star Steel said that the instruction is intended to eliminate the problem whereby GSU responds to discovery by saying that it has not performed a particular study, North Star Steel performs the study and GSU contends in rebuttal that North Star Steel used the wrong methodology.

GSU's objections to subparts (a) and (e) of Instruction No. 5 are OVERRULED. These instructions appear to be reasonable. GSU's objections to subparts (b), (c) and (d) are SUSTAINED. While it may be reasonable to require GSU to provide some such information in connection with particular RFIs, it would be unduly burdensome to require GSU to do so in connection with a blanket instruction.

D. North Star Steel's First RFI, Questions 55, 69, 91, 99 and 101

The questions referenced above are attached as Examiner's Exhibit A.

GSU objects to providing the "calculations" called for in Question 55; the "comparison" called for in Question 69; the "quantification" called for in Question 91; the "comparison" called for in Question 99; and the "graphic comparison" called for in Question 101. GSU's objection is that requiring GSU

to conduct analyses, work or calculations that it has not previously performed would be unreasonable, unduly burdensome, and beyond the scope of proper discovery. It further objected on the ground that North Star Steel can perform the additional analyses itself.

GSU's objections to these questions are SUSTAINED pursuant to APTRA Section 14a(a)(1). It is sufficient for GSU to respond that it has not performed the calculation, comparison or quantification.

E. North Star Steel's First RFI, Questions 23 and 42

On December 4, 1985, GSU filed a letter indicating that it withdraws its objection to Question 42 and that since North Star Steel has agreed that the response to Question 23 can be deferred until January 2, 1986, there is no need to rule on this RFI. The examiner confirmed this with Frederick Ritts, counsel for North Star Steel, by telephone on December 5, 1985. Mr. Ritts indicated that he will let the examiner know if and when a ruling on Question 23 is needed.

F. North Star Steel's First RFI, Question 51

The referenced question is attached as part of Examiner's Exhibit A.

GSU objects on grounds of irrelevance to the portion of the question which calls for calculation of GSU's reserve margins for the years after 1987, because GSU's rate moderation plan ends in calendar year 1987. This objection is OVERRULED. The question is proper under the standard set forth in APTRA Section 14a(a)(1). GSU further objected that GSU would be required to perform calculations that it has not already performed, and that North Star Steel has been provided ample data to perform the calculation itself. This objection is SUSTAINED. GSU need only provide the calculations it has already performed.

G. North Star Steel's First RFI, Question 84

Question 84 asks GSU to identify and provide a copy of all correspondence and contracts between GSU and each consultant or expert witness considered and/or retained by GSU for this proceeding.

GSU objects on the ground that the correspondence and contracts requested are protected by the attorney/client privilege, the attorney work product doctrine and the investigative work product doctrine.

GSU's objection is OVERRULED in part. For each requested document, GSU shall provide the document or shall positively aver all of the following: (1) that the document contains the identity, mental impressions and opinions of an expert who has been informally consulted or retained or specially employed by

GSU in anticipation of litigation of or preparation for this proceeding; (2) that the expert will not be called as a GSU witness; and (3) that the expert's work product does not form a basis in whole or in part of the opinions of a GSU expert witness. If GSU withholds any documents in compliance with this part of this Order and later decides to call an expert rebuttal witness which decision changes the matters averred with respect to one or more of the withheld documents, GSU shall supplement its response by providing such documents. This shall be done by the earliest of the following dates: within five working days after GSU decides that the expert will present rebuttal testimony for GSU, or within five working days after intervenor direct testimony is prefiled if the witness is rebutting such testimony, or within five working days after staff direct testimony is prefiled if the witness is rebutting only staff testimony. With respect to correspondence from GSU's attorney, GSU shall either provide the document or shall positively aver that the document constitutes correspondence to GSU from its attorneys in connection with providing to GSU professional legal services concerning this proceeding.

II. Protective Orders

It is evident to the examiner from the first round of discovery disputes that further detailing of Section V.A.7. of Order No. 4 might expedite discovery dispute resolution. That section is supplemented to provide as follows:

7. A party claiming that requested information is proprietary or confidential and requires a protective order shall present a proposed protective order to the other parties within ten days after receiving the RFI. The parties shall enter into negotiations and agree upon the terms of a protective order. A protective order shall be submitted to the examiner for signing. If the parties disagree on either the need for or terms of the protective order, the proposed protective order shall be attached to the Request for Prehearing Conference. If the dispute concerns the terms of the protective order, alternative provisions shall be submitted at the beginning of the prehearing conference by any party interested in the terms of such order. If the dispute concerns the need for a protective order, parties are advised that this deadline for submitting alternative provisions need not be complied with, but that compliance would expedite access to the requested information pursuant to a protective order in the event such an order is deemed to be