

17. As shown herein, each City has acted, is acting, and is about to act in noncompliance with P.U.R.A., with applicable rules, regulations and orders of this Commission, and with other Texas and Federal law, all to the unlawful detriment of Gulf States.

18. The Commission must hear this appeal de novo and by its final order fix such rates, i.e., none, as the Cities should have fixed.

19. The Commission should further declare by order that the decisions made and the ratemaking standards decided upon by the Cities are unlawful and are not appropriate to be used in setting the rates of Gulf States.

20. The Commission should further declare that the Cities have unlawfully and upon illegal grounds decided that Gulf States' rates must be reduced.

21. If the Cities are allowed to proceed to execute their rate reduction decision, the resulting rates will plainly have been based upon unlawful standards and determined through an unlawful process. Therefore, the Commission must act promptly to set aside the ordinances and decisions herein appealed. Should the Commission become convinced that any hearing may be necessary to consider reducing Gulf States' existing rates within such Cities, such hearing should be held under the auspices and control of this Commission. To allow the hearing to proceed at the City level under the unlawful standards decided upon by the Cities and pursuant to the unlawful process being followed by the Cities is not in the public interest. It will result in needless expense to Gulf States and its ratepayers and will almost certainly lead

to expensive and time consuming litigation in state and Federal courts since, if this Commission fails to correct the Cities' unlawful course, Gulf States will be left with little choice but to sue for injunctive and other appropriate relief under state and Federal law.

22. In the alternative, if the Commission will not promptly set aside the City ordinances and decisions herein appealed, it must promptly institute a show cause proceeding pursuant to Section 21.162 of its Rules of Practice and Procedure. Each City should be cited to appear before the Commission to show cause why it should not comply P.U.R.A., with the rules, regulations and orders of this Commission, and with other applicable Texas and Federal law.

23. An extremely important point needs to be most carefully considered by this Commission. Gulf States, as is well known to the Commission, has the lowest bond rating (triple B) of any electric utility in this State. As that and other factors clearly indicate, the financial viability of Gulf States is more precarious than that of any other investor owned electric utility in this State. The unlawful action embarked upon by the Cities is in apparent reckless disregard of the potential consequences to the perceptions and reactions of the investors and creditors upon whom Gulf States depends for funds necessary to continue to provide adequate and reliable service. Such unlawful action, if allowed to go forward against Gulf States, will reflect adversely upon the general quality of regulation in Texas, to the detriment of all utilities and their customers. Rate increases are not permitted without a careful, orderly and thorough process of lawful

consideration by this Commission. Rate decreases should not be imposed on any utility without similar care and compliance with the law. Such symmetry of process has not been and is not being observed by the Cities. They have made the quick and unsupported decisions, herein appealed, to impose unlawful ratemaking standards on Gulf States and are proceeding with undue haste to implement their rate decrease decision. On the other hand, with regard to Gulf States' proposal to increase rates, Rose City intends to suspend the effective date to provide time for a more careful and orderly process. Such lack of symmetry is a patent denial to Gulf States of the equal protection of law. The protection afforded Gulf States is starkly different from that the Cities are affording the ratepayers through their suspension or rejection decisions.

To allow the Cities to continue their charted course would be destructive of the objective of P.U.R.A. "to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities". P.U.R.A. §2. That such objective is fundamental to P.U.R.A. was recognized by the Supreme Court of Texas in its seminal decision in City of Corpus Christi v. Public Utility Commission of Texas, 572 S.W.2d 290 (1978). The Supreme Court, in that important decision, held that this Commission was created "to centralize expertise in a certain regulatory area and, thus, is to be given a large degree of latitude ... in the methods by which it accomplishes its regulatory function." 572 S.W.2d at 297. For the Commission to permit these, or any cities, to essentially usurp this Commission's power and reduce

rates set by the Commission, on the flimsy and transparent grounds invoked by the Cities here, is to open the doors to chaos in Texas utility regulation. Dual jurisdiction will work only if the Commission exerts strong and effective control to insure lawful process and procedures at both the state and city levels.

Wherefore, Gulf States prays the Commission set aside the ordinances and decisions and hearing scheduling actions herein appealed and make such findings and declarations as herein above requested and, in the alternative, that the Commission institute the show cause proceeding herein above described.

Respectfully submitted

GULF STATES UTILITIES COMPANY

By Cecil L. Johnson
Cecil L. Johnson #10689500
Its Attorney
350 Pine Street
P. O. Box 2951
Beaumont, Texas 77704
(409) 838-6631

Of Counsel:

George A. Avery
Wald, Harkrader & Ross
1300 Nineteenth Street, N.W.
Washington, D.C. 20036-1607

ORDINANCE NO. _____

AN ORDINANCE SUSPENDING THE OPERATION OF THE PROPOSED RATE SCHEDULE OF GULF STATES UTILITIES, AND SETTING A PUBLIC HEARING FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE RATES CURRENTLY BEING CHARGED FOR ELECTRIC UTILITY SERVICE BY GULF STATES UTILITIES COMPANY IN THE CITY OF ROSE CITY, TEXAS ARE JUST AND REASONABLE, AND TO DETERMINE THE JUST AND REASONABLE RATES TO BE CHARGED BY SAID UTILITY COMPANY, AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, on the 1st day of October, 1985, Gulf States Utilities filed a proposal to increase the rates charged by the Company within the City of Rose City, Texas; and,

WHEREAS, the City of Rose City, Texas, desires to enter into a public hearing in order to receive evidence concerning said proposed rate increase and to study said rate increase request and the data supporting the same in order to determine just and reasonable rates; and,

WHEREAS, the Legislature of the State of Texas has imposed upon the City of Rose City, Texas, the duty to insure that every rate made, demanded or receivable by any public utility company is just and reasonable; and,

WHEREAS, there has been a material change in circumstances affecting the rates of Gulf States Utilities Company since the rate currently being charged by it in the City of Rose City, Texas were set; and,

WHEREAS, there is a great disparity and an unreasonable difference between the rates being maintained by Gulf States Utilities Company as between localities and as between classes of service (i.e., all classes of customers within the City of Rose City, Texas, are being charged more for the same service than similar classes of customers are being charged in other localities); and,

WHEREAS, that, in order to prevent unreasonable preferences between localities and classes of customers, it is necessary for the City of Rose City, Texas to fix the rates charged by the utility company in the City of Rose City, Texas, so that the same are fair, even and equitable; and,

WHEREAS, in order to attain equity and fairness, it is required that the rates charged for all classes of customers within the City of Rose City, Texas, be reduced to a level which equals the lowest rates charged to similar classes of customers by Gulf States Utilities Company in other localities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROSE CITY, TEXAS:

That in order to adequately review the request of Gulf States Utilities and to give said request careful study which it requires, the City Council of the City of Rose City, Texas, does hereby suspend the operation of the proposed rate schedule for a period of 90 days beyond the date on which said schedule of rates would otherwise go into effect.

That a public hearing shall be held in the Port Arthur Civic Center, 3401 Cultural Drive, Port Arthur, Texas, at 7:00 o'clock p.m. on the 23rd day of October, 1985, in order to receive evidence from Gulf States Utilities as well as any other interested citizens concerning said proposed rate increase; and to require Gulf States Utilities Company to show that the existing rates currently being charged by it in the City of Rose City, Texas, are just and reasonable and, further, why the same should not be reduced, as herein proposed.

Be it further ORDAINED that the public hearing be arranged to be held jointly with other participating cities.

Be it further ORDAINED that due notice of this Ordinance and of the hearing herein set or of the joint hearing, if the case may be, be served upon Gulf States Utilities Company.

Be it further ORDAINED that notice of the hearing herein set or of the joint hearing, as the case may be, be served on the Public Utilities Commission of the State of Texas, and on the office of the Public Utility Counsel of the State of Texas, and that the Public Utility Counsel and the members of the Public Utilities Commission be invited to attend said hearing, participate herein and present evidence, if they so desire.

Be it further ORDAINED that, after the close of the hearing herein set or the joint hearing, as the case may be, the City Council of the City of Rose City, Texas, shall set such rates as it finds to be just and reasonable under all of the facts and circumstances.

That if any section, subsection, sentence, clause or phrase of this ordinance, or the application of the same to a particular set of persons or circumstances, should for any reason be held to be invalid, such invalidity shall in no way affect the remaining portions of this ordinance and to such end the various portions and provisions of this ordinance are declared to be severable.

PASSED this 10th day of October, 1985, at the regular meeting of the City Council of the City of Rose City, Texas.

READ and finally PASSED this _____ day of November, 1985, at the regular meeting of the City Council of the City of Rose City, Texas.

MARY ANN HARGRAVES, Mayor
City of Rose City, Texas

ATTEST:

ANNETTE LUKENBILL, City Secretary
City of Rose City, Texas

AN ORDINANCE SETTING A PUBLIC HEARING FOR THE PURPOSE OF DETERMINING WHETHER OR NOT THE RATES CURRENTLY BEING CHARGED FOR ELECTRIC UTILITY SERVICE BY GULF STATES UTILITIES COMPANY IN THE CITY OF PINEHURST, TEXAS ARE JUST AND REASONABLE, AND TO DETERMINE THE JUST AND REASONABLE RATES TO BE CHARGED BY SAID UTILITY COMPANY.

WHEREAS, the Legislature of the State of Texas has imposed upon the City of Pinehurst, Texas, the duty to insure that every rate made, demanded or receivable by any public utility company is just and reasonable; and

WHEREAS, there has been a material change in circumstances affecting the rates of Gulf States Utilities Company since the rates currently being charged by it in the City of Pinehurst, Texas, were set; and,

WHEREAS, there is a great disparity and an unreasonable difference between the rates being maintained by Gulf States Utilities Company as between localities and as between classes of service (i.e., all classes of customers within the City of Pinehurst, Texas, are being charged more for the same service than similar classes of customers are being charged in other localities); and,

WHEREAS, that, in order to prevent unreasonable preferences between localities and classes of customers, it is necessary for the City of Pinehurst, Texas to fix the rates charged by the utility company in the City of Pinehurst, Texas, so that the same are fair, even and equitable; and,

WHEREAS, in order to attain equity and fairness, it is required that the rates charged for all classes of customers within the City of Pinehurst, Texas, be reduced to a level which equals the lowest rate charged to similar classes of customers by Gulf States Utilities Company in other localities.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PINEHURST, TEXAS:

That a public hearing be held at 7:30 o'clock p.m. on the 23rd day of October, A.D. 1985, at the ~~City Hall of the City of Pinehurst, Texas~~, the purpose of which will be to require Gulf States Utilities Company to show that the existing rates currently being charged by it in the City of Pinehurst, Texas, are just and reasonable and, further, why the same should not be reduced, as herein proposed.

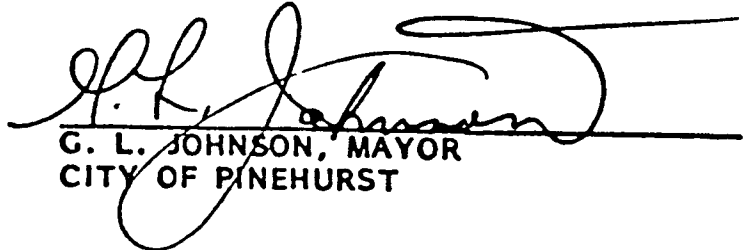
Be it further ORDAINED that, if other area municipalities take similar action, the public hearing herein set be arranged to be held jointly with the participating cities.

Be it further ORDAINED that due notice of this Ordinance and of the hearing herein set or of the joint hearing, if the case may be, be served upon Gulf States Utilities Company.

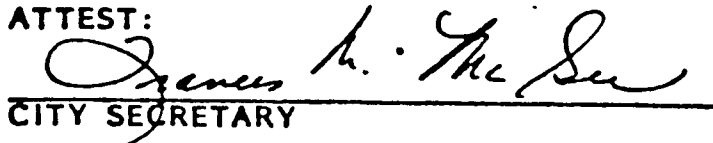
Be it further ORDAINED that notice of the hearing herein set or of the joint hearing, as the case may be, be served on the Public Utilities Commission of the State of Texas, and on the office of the Public Utility Counsel of the State of Texas, and on the office of the Public Utility Counsel of the State of Texas, and that the Public Utility Counsel and the members of the Public Utilities Commission be invited to attend said hearing, participate herein and present evidence, if they so desire.

Be it further ORDAINED that, after the close of the hearing herein set or the joint hearing, as the case may be, the City Council of the City of Pinehurst, Texas, shall set such rates as it finds to be just and reasonable under all of the facts and circumstances.

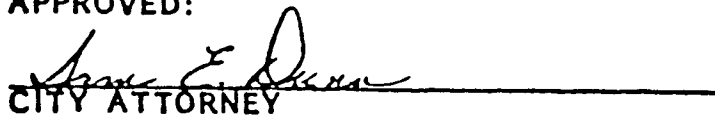
PASSED this 10 day of October, 1985, at the regular meeting of the City Council of the City of Pinehurst, Texas.


G. L. JOHNSON, MAYOR
CITY OF PINEHURST

ATTEST:


CITY SECRETARY

APPROVED:


CITY ATTORNEY



GULF STATES UTILITIES COMPANY

POST OFFICE BOX 2951 • BEAUMONT, TEXAS 77704

AREA CODE 409 838-6631

October 21, 1985

Honorable Dru Stephenson
Mayor of the City of Vidor, Texas
170 North Main
Vidor, Texas 77662

Dear Mayor Stephenson:

Re: Hearing Scheduled for October 23, 1985

Through this letter, Gulf States Utilities Company (Gulf States or the Company) requests that the City of Vidor cancel or delay the hearing presently scheduled for October 23, 1985, at 7:00 p.m. in the Port Arthur Civic Center. In the event that the Company's request is denied, we then request that such hearing date instead be utilized for a prehearing conference.

As you probably know, on October 18, 1985, Gulf States filed a Petition for Review and Complaint with the Public Utility Commission of Texas. By that Petition, we appealed the city's Ordinance which first scheduled the hearing. For your easy reference, a copy of the Petition, which includes a copy of the Ordinance, is enclosed with this letter. Since the matter has now been appealed to the Commission, we respectfully request that you cancel the hearing, or at least delay it until the Commission has ruled on our appeal.

We assure you that we take our obligations to, and relationship with, the City quite seriously. It was only after serious deliberation that we filed the Petition with the Commission. Nonetheless, it seems clear to us that any further action taken pursuant to the Ordinance would be illegal.

We feel that granting our request for cancellation or delay is the only legally proper course. However, recognizing the possibility that you may not agree with our view on this point, we ask that, if you deny the requested cancellation or delay, you utilize the time and place presently set for the hearing to conduct a prehearing conference.

If a hearing on your proposal to reduce Gulf States' rates is to go forward, a prehearing conference and adequate discovery is absolutely essential, as a matter of law, if Gulf States is to be given a real opportunity to participate in the hearing and defend its position. A prehearing conference and discovery should also be of significant help in holding down the expense of such a hearing. That expense is ultimately passed on, either as higher taxes or as higher rates.

Honorable Dru Stephenson
October 21, 1985
Page 2

Among the items that must be addressed and resolved at the prehearing conference are: the method of our presentation, the method of anyone else's presentation, discovery, the order of presentations, who will provide the court reporter, the procedures to be used to organize the hearing, and other matters concerning a fair, orderly and efficient hearing.

In any hearing, Gulf States will have a considerable amount of testimony to present. Since it is proposed to reduce our current rates, we will want to show that those rates are, in fact, too low and cannot legally be reduced. We recently filed with your city and with the Commission forty volumes of testimony, exhibits and schedules which make a strong and convincing case in support of our position. We have twenty-one witnesses whose testimony will support that showing. At the prehearing conference, a preliminary schedule for presentation of our witnesses must be set since the witnesses could not all be heard in one day.

We have also been given to believe that the City has decided to reduce our rates to the level of the existing rates which have been imposed on us in Louisiana. We recently filed a case in Louisiana, which shows that those existing Louisiana rates are too low. We have asked that Louisiana rates be raised to a level above that we are presently proposing for Texas rates. We plan to present our Louisiana case in any hearing you hold because our Louisiana filing shows that it would be illegal to impose the existing Louisiana rates in Texas. That presentation will consist of the testimony of eleven witnesses and nine volumes of testimony, schedules and exhibits. Again, it will take considerable time to hear all those witnesses. At the prehearing conference, we must agree on some reasonable schedule for their appearance.

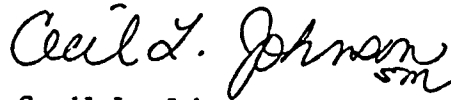
As to the presentation by the City and others, we have the legal right to discover enough about such presentations before the hearing so that we can adequately answer them at the hearing. That process of discovery can be agreed to at the prehearing conference. To that end, we request that the City or any other party be required to reduce their witnesses' testimony to writing. That written testimony should be delivered to us at least ten business days before the date on which we will have to cross-examine them. For expert testimony, it takes considerable time to prepare adequately to cross-examine. If such experts are not required to provide written testimony in advance of hearings, we will need the opportunity to take the deposition of each expert witness the City or anyone else would call. Otherwise, we will be deprived of our legally protected right to meaningful cross-examination.

The procedures to be used and the order of presentation, are also much too important to leave to a last minute resolution. These important questions should also be taken up at the prehearing conference.

Honorable Dru Stephenson
October 21, 1985
Page 3

Again, we urge you to cancel or delay the hearing. This is the only legally permissible course in light of our appeal. In the absence of that action, there must be a prehearing conference if we are going to be accorded the full and fair hearing which the law provides. We are having this letter hand delivered to you and your City Attorney this morning. We need and request a prompt answer.

Sincerely,

A handwritten signature in cursive script that reads "Cecil L. Johnson". The signature is written in dark ink and includes a small "sm" at the end.

Cecil L. Johnson

Enclosure

cc: Mr. Jerry Hatton
City Attorney, Vidor
906 Goodhue Building
Beaumont, Texas 77701



GULF STATES UTILITIES COMPANY

POST OFFICE BOX 2951 • BEAUMONT, TEXAS 77704

AREA CODE 409 838-6631

October 21, 1985

Honorable Malcolm Clark
Mayor of the City of Port Arthur, Texas
444 Fourth Street
P.O. Box 1089
Port Arthur, Texas 77640

Dear Mayor Clark:

Re: Hearing Scheduled for October 23, 1985

Through this letter, Gulf States Utilities Company (Gulf States or the Company) requests that the City of Port Arthur cancel or delay the hearing presently scheduled for October 23, 1985, at 7:00 p.m. in the Port Arthur Civic Center. In the event that the Company's request is denied, we then request that such hearing date instead be utilized for a prehearing conference.

As you probably know, on October 18, 1985, Gulf States filed a Petition for Review and Complaint with the Public Utility Commission of Texas. By that Petition, we appealed the city's Ordinance which first scheduled the hearing. For your easy reference, a copy of the Petition, which includes a copy of the Ordinance, is enclosed with this letter. Since the matter has now been appealed to the Commission, we respectfully request that you cancel the hearing, or at least delay it until the Commission has ruled on our appeal.

We assure you that we take our obligations to, and relationship with, the City quite seriously. It was only after serious deliberation that we filed the Petition with the Commission. Nonetheless, it seems clear to us that any further action taken pursuant to the Ordinance would be illegal.

We feel that granting our request for cancellation or delay is the only legally proper course. However, recognizing the possibility that you may not agree with our view on this point, we ask that, if you deny the requested cancellation or delay, you utilize the time and place presently set for the hearing to conduct a prehearing conference.

If a hearing on your proposal to reduce Gulf States' rates is to go forward, a prehearing conference and adequate discovery is absolutely essential, as a matter of law, if Gulf States is to be given a real opportunity to participate in the hearing and defend its position. A prehearing conference and discovery should also be of significant help in holding down the expense of such a hearing. That expense is ultimately passed on, either as higher taxes or as higher rates.

Honorable Malcolm Clark
October 21, 1985
Page 2

Among the items that must be addressed and resolved at the prehearing conference are: the method of our presentation, the method of anyone else's presentation, discovery, the order of presentations, who will provide the court reporter, the procedures to be used to organize the hearing, and other matters concerning a fair, orderly and efficient hearing.

In any hearing, Gulf States will have a considerable amount of testimony to present. Since it is proposed to reduce our current rates, we will want to show that those rates are, in fact, too low and cannot legally be reduced. We recently filed with your city and with the Commission forty volumes of testimony, exhibits and schedules which make a strong and convincing case in support of our position. We have twenty-one witnesses whose testimony will support that showing. At the prehearing conference, a preliminary schedule for presentation of our witnesses must be set since the witnesses could not all be heard in one day.

We have also been given to believe that the City has decided to reduce our rates to the level of the existing rates which have been imposed on us in Louisiana. We recently filed a case in Louisiana, which shows that those existing Louisiana rates are too low. We have asked that Louisiana rates be raised to a level above that we are presently proposing for Texas rates. We plan to present our Louisiana case in any hearing you hold because our Louisiana filing shows that it would be illegal to impose the existing Louisiana rates in Texas. That presentation will consist of the testimony of eleven witnesses and nine volumes of testimony, schedules and exhibits. Again, it will take considerable time to hear all those witnesses. At the prehearing conference, we must agree on some reasonable schedule for their appearance.

As to the presentation by the City and others, we have the legal right to discover enough about such presentations before the hearing so that we can adequately answer them at the hearing. That process of discovery can be agreed to at the prehearing conference. To that end, we request that the City or any other party be required to reduce their witnesses' testimony to writing. That written testimony should be delivered to us at least ten business days before the date on which we will have to cross-examine them. For expert testimony, it takes considerable time to prepare adequately to cross-examine. If such experts are not required to provide written testimony in advance of hearings, we will need the opportunity to take the deposition of each expert witness the City or anyone else would call. Otherwise, we will be deprived of our legally protected right to meaningful cross-examination.

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Honorable Malcolm Clark
October 21, 1985
Page 3

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Sincerely,

Cecil L. Johnson
Cecil L. Johnson

Enclosure

cc: Mr. George Wikoff
City Attorney, Port Arthur
444 Fourth Street
P.O. Box 1089
Port Arthur, Texas 77640

**GULF STATES UTILITIES COMPANY**

POST OFFICE BOX 2951 • BEAUMONT, TEXAS 77704

AREA CODE 409 838-6631

October 21, 1985

Honorable John Banken
Mayor of the City of Bridge City, Texas
260 Rachal
P.O. Box 846
Bridge City, Texas 77611

Dear Mayor Banken:

Re: Hearing Scheduled for October 23, 1985

Through this letter, Gulf States Utilities Company (Gulf States or the Company) requests that the City of Bridge City cancel or delay the hearing presently scheduled for October 23, 1985, at 7:00 p.m. in the Port Arthur Civic Center. In the event that the Company's request is denied, we then request that such hearing date instead be utilized for a prehearing conference.

As you probably know, on October 18, 1985, Gulf States filed a Petition for Review and Complaint with the Public Utility Commission of Texas. By that Petition, we appealed the city's Ordinance which first scheduled the hearing. For your easy reference, a copy of the Petition, which includes a copy of the Ordinance, is enclosed with this letter. Since the matter has now been appealed to the Commission, we respectfully request that you cancel the hearing, or at least delay it until the Commission has ruled on our appeal.

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Honorable John Banken
October 21, 1985
Page 2

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Honorable John Banken
October 21, 1985
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Sincerely,

Cecil L. Johnson
sm

Cecil L. Johnson

Enclosure

cc: Mr. H. D. Pate
City Attorney, Bridge City
260 Rachal
P.O. Box 846
Bridge City, Texas 77611

**GULF STATES UTILITIES COMPANY**

POST OFFICE BOX 2951 • BEAUMONT, TEXAS 77704

AREA CODE 409 838-6631

October 21, 1985

Honorable Sylvester Moore
Mayor of the City of Groves, Texas
3947 Lincoln
P.O. Box 846
Groves, Texas 77619

Dear Mayor Moore:

Re: Hearing Scheduled for October 29, 1985

Through this letter, Gulf States Utilities Company (Gulf States or the Company) requests that the City of Groves cancel or delay the hearing presently scheduled for October 29, 1985, at 7:00 p.m. in the City Council chambers in the Groves Municipal Building, 3947 Lincoln Avenue, Groves, Texas. In the event that the Company's request is denied, we then request that such hearing date instead be utilized for a prehearing conference.

As you probably know, on October 18, 1985, Gulf States filed a Petition for Review and Complaint with the Public Utility Commission of Texas. By that Petition, we appealed the city's Ordinance which first scheduled the hearing. For your easy reference, a copy of the Petition, which includes a copy of the Ordinance, is enclosed with this letter. Since the matter has now been appealed to the Commission, we respectfully request that you cancel the hearing, or at least delay it until the Commission has ruled on our appeal.

We assure you that we take our obligations to, and relationship with, the City quite seriously. It was only after serious deliberation that we filed the Petition with the Commission. Nonetheless, it seems clear to us that any further action taken pursuant to the Ordinance would be illegal.

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Among the items that must be addressed and resolved at the prehearing conference are: the method of our presentation, the method of anyone else's presentation, discovery, the order of presentations, who will provide the court reporter, the procedures to be used to organize the hearing, and other matters concerning a fair, orderly and efficient hearing.

In any hearing, Gulf States will have a considerable amount of testimony to present. Since it is proposed to reduce our current rates, we will want to show that those rates are, in fact, too low and cannot legally be reduced. We recently filed with your city and with the Commission forty volumes of testimony, exhibits and schedules which make a strong and convincing case in support of our position. We have twenty-one witnesses whose testimony will support that showing. At the prehearing conference, a preliminary schedule for presentation of our witnesses must be set since the witnesses could not all be heard in one day.

We have also been given to believe that the City has decided to reduce our rates to the level of the existing rates which have been imposed on us in Louisiana. We recently filed a case in Louisiana, which shows that those existing Louisiana rates are too low. We have asked that Louisiana rates be raised to a level above that we are presently proposing for Texas rates. We plan to present our Louisiana case in any hearing you hold because our Louisiana filing shows that it would be illegal to impose the existing Louisiana rates in Texas. That presentation will consist of the testimony of eleven witnesses and nine volumes of testimony, schedules and exhibits. Again, it will take considerable time to hear all those witnesses. At the prehearing conference, we must agree on some reasonable schedule for their appearance.

As to the presentation by the City and others, we have the legal right to discover enough about such presentations before the hearing so that we can adequately answer them at the hearing. That process of discovery can be agreed to at the prehearing conference. To that end, we request that the City or any other party be required to reduce their witnesses' testimony to writing. That written testimony should be delivered to us at least ten business days before the date on which we will have to cross-examine them. For expert testimony, it takes considerable time to prepare adequately to cross-examine. If such experts are not required to provide written testimony in advance of hearings, we will need the opportunity to take the deposition of each expert witness the City or anyone else would call. Otherwise, we will be deprived of our legally protected right to meaningful cross-examination.

The procedures to be used and the order of presentation, are also much too important to leave to a last minute resolution. These important questions should also be taken up at the prehearing conference.

Honorable Sylvester Moore
 October 21, 1985
 Page 3

Again, we urge you to cancel or delay the hearing. This is the only legally permissible course in light of our appeal. In the absence of that action, there must be a prehearing conference if we are going to be accorded the full and fair hearing which the law provides. We are having this letter hand delivered to you and your City Attorney this morning. We need and request a prompt answer.

Sincerely,

Cecil L. Johnson

Cecil L. Johnson

Enclosure

cc: Mr. Earl Black
 City Attorney, Groves
 3947 Lincoln
 P.O. Box 846
 Groves, Texas 77619

**GULF STATES UTILITIES COMPANY**

POST OFFICE BOX 2951 • BEAUMONT, TEXAS 77704

AREA CODE 409 838-6631

October 21, 1985

Honorable G. C. Graham
Mayor of the City of Port Neches, Texas
634 Avenue C
P.O. Box 758
Port Neches, Texas 77651

Dear Mayor Graham:

Re: Hearing Scheduled for October 23, 1985

Through this letter, Gulf States Utilities Company (Gulf States or the Company) requests that the City of Port Neches cancel or delay the hearing presently scheduled for October 23, 1985, at 7:00 p.m. in the Port Arthur Civic Center. In the event that the Company's request is denied, we then request that such hearing date instead be utilized for a prehearing conference.

As you probably know, on October 18, 1985, Gulf States filed a Petition for Review and Complaint with the Public Utility Commission of Texas. By that Petition, we appealed the city's Ordinance which first scheduled the hearing. For your easy reference, a copy of the Petition, which includes a copy of the Ordinance, is enclosed with this letter. Since the matter has now been appealed to the Commission, we respectfully request that you cancel the hearing, or at least delay it until the Commission has ruled on our appeal.

We assure you that we take our obligations to, and relationship with, the City quite seriously. It was only after serious deliberation that we filed the Petition with the Commission. Nonetheless, it seems clear to us that any further action taken pursuant to the Ordinance would be illegal.

We feel that granting our request for cancellation or delay is the only legally proper course. However, recognizing the possibility that you may not agree with our view on this point, we ask that, if you deny the requested cancellation or delay, you utilize the time and place presently set for the hearing to conduct a prehearing conference.

If a hearing on your proposal to reduce Gulf States' rates is to go forward, a prehearing conference and adequate discovery is absolutely essential, as a matter of law, if Gulf States is to be given a real opportunity to participate in the hearing and defend its position. A prehearing conference and discovery should also be of significant help in holding down the expense of such a hearing. That expense is ultimately passed on, either as higher taxes or as higher rates.

Honorable G. C. Graham
October 21, 1985
Page 2

Among the items that must be addressed and resolved at the prehearing conference are: the method of our presentation, the method of anyone else's presentation, discovery, the order of presentations, who will provide the court reporter, the procedures to be used to organize the hearing, and other matters concerning a fair, orderly and efficient hearing.

In any hearing, Gulf States will have a considerable amount of testimony to present. Since it is proposed to reduce our current rates, we will want to show that those rates are, in fact, too low and cannot legally be reduced. We recently filed with your city and with the Commission forty volumes of testimony, exhibits and schedules which make a strong and convincing case in support of our position. We have twenty-one witnesses whose testimony will support that showing. At the prehearing conference, a preliminary schedule for presentation of our witnesses must be set since the witnesses could not all be heard in one day.

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The procedures to be used and the order of presentation, are also much too important to leave to a last minute resolution. These important questions should also be taken up at the prehearing conference.

Honorable G. C. Graham
October 21, 1985
Page 3

Page 15 of 15

Again, we urge you to cancel or delay the hearing. This is the only legally permissible course in light of our appeal. In the absence of that action, there must be a prehearing conference if we are going to be accorded the full and fair hearing which the law provides. We are having this letter hand delivered to you and your City Attorney this morning. We need and request a prompt answer.

Sincerely,

Cecil L. Johnson
Cecil L. Johnson

Enclosure

cc: Mr. H. P. Wright
City Attorney, Port Neches
634 Avenue C
P.O. Box 758
Port Neches, Texas 77651

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing document was served on each of the following, via United States Mail, proper postage paid, or by hand delivery, on this 8th day of November 1985.

General Counsel
Public Utility Commission of Texas
7800 Shoal Creek Boulevard
Austin, Texas 78757

City of Pinehurst
3640 Mockingbird
Orange, Texas 77630

City of Rose City
P. O. Box 978
Vidor, Texas 77662


Cecil L. Johnson

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

4:00
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK
OF TEXAS

APPLICATION OF GULF STATES UTILITIES
COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 8

NOTICE OF SECOND PREHEARING CONFERENCE AND ORDER ESTABLISHING
NUMBER OF COPIES OF MATERIALS PARTIES ARE TO FILE,
GRANTING MOTIONS TO INTERVENE AND MOTIONS TO CONSOLIDATE
CITY APPEALS, RESPONDING TO REQUEST TO CLARIFY ORDER NO. 5, AND
ADDING NAME TO SERVICE LIST

I. Notice of Second Prehearing Conference

Pursuant to Order No. 4, on November 8, 1985, Gulf States Utilities Company (GSU) filed a request for a prehearing conference to resolve disputed requests for information (RFIs). The RFIs in question were issued by the Office of Public Utility Counsel (OPC) and the Commission's general counsel.

Pursuant to P.U.C. PROC. R. 21.83, a second prehearing conference will be conducted herein on Monday, November 25, 1985, 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, November 21, 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. Number of Copies of Documents to be Filed

The examiner notes that P.U.C. PROC. R. 21.64 provides that three copies of all pleadings shall be filed unless directed otherwise by the Commission. The number of copies of pleadings in this docket which are having to be made for retention in official files or distribution within the Commission is causing a severe burden on the Commission's filing clerk and some delay in documents reaching the examiner. Accordingly, pursuant to P.U.C. PROC. R. 21.64, it is hereby ORDERED that an original and nine copies of every document filed in this case shall be filed with the Commission's filing clerk. Failure to do so may result in the filing being rejected.

III. Motions to Intervene

On October 21, 1985, Joyce Roddy filed a motion to intervene in this case on behalf of the Concerned Citizens of Southeast Texas. On October 23, 1985, the City of Bridge City, Texas filed a motion to intervene. No objections have been filed concerning these motions. In accordance with the procedures set forth in Order No. 4 entered in this case, these motions to intervene are hereby GRANTED.

IV. Motions to Consolidate City Appeals

On October 24, 1985, GSU filed an appeal from the decisions of the Cities of Dayton, Colmesneil and Pinehurst which denied GSU's request for a rate increase. With the appeals were motions to consolidate such appeals with the present case. No objections to these motions were filed. In accordance with the procedures set forth in Order No. 4, these motions to consolidate are hereby GRANTED.

V. Request to Clarify Order No. 5

On October 29, 1985, Alfred Herrera of the Commission's General Counsel's Office filed a letter request for clarification of Order No. 5. In that order the examiner had granted in part and denied in part general counsel's motion for an order finding GSU's rate filing package (RFP) to be materially deficient. General counsel requested clarification concerning whether or not the time limits governing this case will not begin to run, pursuant to P.U.C. PROC. R. 21.69(a), until GSU submits a complete RFP. On November 4, 1985, GSU filed a response to the general counsel's motion.

The examiner has reviewed her order and is of the opinion that it makes clear that relief was granted pursuant to P.U.C. PROC. R. 21.65(b), not 21.69(a). Thus GSU has ten days after the date of Order No. 5 to correct the items found to constitute material deficiencies before GSU's effective date could be affected. In its response to general counsel's motion GSU had indicated that matters found not to be in compliance would be corrected within the ten day period. The examiner thus finds it unnecessary to decide at this time an issue raised at the October 21, 1985 prehearing conference, which is whether or not GSU's effective date as amended would be delayed in the event the RFP is found still not to be in compliance after the expiration of the ten day period.

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 |
| and | § | |
| | § | 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

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

RECEIVED
PUBLIC UTILITY COMMISSION
PUBLIC UTILITY OF TEXAS
FILING CLERK

ORDER NO. 7

ORDER REDUCING GULF STATES UTILITIES COMPANY'S
INTERIM FUEL FACTOR AND ORDERING REFUNDS
OF FUEL COST OVERRECOVERIES

I. Procedural Background

On October 16, 1985, Gulf States Utilities Company (GSU) filed a motion to reduce its interim fuel factor and to refund past overrecoveries of fuel costs. At the first prehearing conference in these consolidated dockets, convened on October 21, 1985, the parties indicated that they wished to examine GSU's calculations and engage in settlement negotiations in an effort to implement a fuel factor reduction and refund quickly. Pursuant to agreement of the parties, the prehearing conference was recessed rather than adjourned, to be reconvened on October 29, 1985 for the purpose of taking up GSU's motion.

The prehearing conference reconvened on October 29, 1985. The following persons appeared: Donald M. Clements for GSU; Jonathan Day for Texas Industrial Energy Consumers; W. Scott McCollough of the Attorney General's office for the Texas state agencies which are GSU customers; Jim Boyle for the Office of Public Utility Counsel; and Alfred R. Herrera of the Commission General Counsel's office for the Commission staff and in the public interest. The parties announced that they had reached a stipulation of all issues relating to GSU's motion except one. They indicated that they believed that the stipulation was either agreed to or not opposed by every party to the case. Mr. Clements stated that he had talked with representatives for all entities which either were parties to the case or which had pending motions to intervene, and that none had expressed problems with the stipulation being implemented.

The parties offered into evidence a stipulation signed by some of the parties, which is attached as Examiner's Exhibit A. The parties also offered into evidence written testimony in support of the stipulation by GSU witnesses Lana R. Wynne and Judith Moses. These documents were marked Joint Exhibits 1, 2, and 3 respectively. The examiner indicated that she would reserve a ruling admitting these documents into the record until she had contacted the parties who were not present and verified that they had no objection.

The unsettled issue is a legal one, and concerns whether the Commission lawfully can order that proceeds from refund checks for customers who cannot be located must be distributed to GSU's Project Care, or whether that issue is controlled by the State laws regarding escheat. Oral argument was heard respecting this issue. Mr. McCollough argued that the state escheat laws are controlling. Mr. Clements and Mr. Boyle argued to the contrary. The parties agreed that under the stipulation, the issue need not be resolved for at least sixty days, that it should not delay adoption of the settlement, and that briefing the issue would be appropriate. As discussed at the prehearing conference, it is hereby ORDERED that anyone wishing to submit a brief concerning this issue shall do so no later than December 2, 1985. Reply briefs, if any, are due December 9, 1985.

The examiner pointed out that she had received a letter from J. Stephen Ravel, General Counsel, Treasury Department, State of Texas, respecting this issue. A copy is attached as Examiner's Exhibit B. Attached to the letter was a copy of Title 6, Chapters 71 to 75, of the Property Code as amended by S.B. 906, 69th Legislature, Regular Session, 1985; and of Section 91.403 of the Natural Resources Code (Vernon 1978), miscellaneous provisions of S.B. 906, 69th Legislature, Regular Session, 1985.

Mr. Clements indicated that an order would have to be issued by October 31, 1985 for it to be incorporated into GSU's November billing cycle. All parties wanted this to be done.

The prehearing conference was then recessed. The examiner indicated that it should be considered adjourned when she issued this order.

The examiner then contacted every party whose own representative had not signed the stipulation, as well as Mr. H. D. Pate, counsel for the City of Bridge City, Texas, and Ms. Joyce Roddy of Concerned Citizens of Southeast Texas, both of whom have pending motions to intervene. None objected to the stipulation being implemented with an October 31, 1985 order, or to any of the other procedures described in this order. Accordingly, Joint Exhibits 1, 2 and 3 are hereby ADMITTED into evidence.

II. Reduction of GSU's Fuel Factor

Effective August 1, 1985, GSU's fuel factor was reduced to a system-wide fuel factor of 3.066 cents per kilowatt hour (cents/kwh), pursuant to the Commission's order in Docket No. 6376. The stipulation in the current case indicates that the amount of the fuel cost overrecovery, including interest for the period of August 1, 1985 through September 30, 1985, is approximately \$11 million. The parties stipulated that the present fuel factor no longer represents the best estimate of GSU's fuel cost.

Under the stipulation, the revised interim fuel factor will be effective with the first bill issued in the first GSU billing cycle after the stipulation is approved by the examiner. The stipulated level of the factor is 2.788 cents/kwh.

It is based on actual reconcilable fuel costs for September, 1985 divided by total megawatt hours available for distribution in that month, adjusted for a normalized system loss rate of 5.5 percent. The revised factors will be, according to delivery voltage level:

| | |
|-----------|-----------------|
| Secondary | 2.924 cents/kwh |
| Primary | 2.845 cents/kwh |
| 34.5KV | 2.826 cents/kwh |
| 69KV | 2.703 cents/kwh |
| 138KV | 2.703 cents/kwh |
| 230KV | 2.681 cents/kwh |

The stipulated to fuel factor is supported by the testimony of GSU witness Wynne, and appears reasonable. The examiner hereby ORDERS that effective with GSU's next billing cycle, GSU shall implement a new interim fixed fuel factor in accordance with the stipulation. 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, or in the event such case were to be dismissed or delayed, in GSU's next general rate case or fuel reconciliation docket, whichever should come first.

III. Refunds of Fuel Cost Overrecoveries

GSU witness Moses testified that the total amount of the refund is \$11,299,554, which includes \$278,422 of interest. The interest was calculated using a rate of 13.27 percent for the period of August 1985 through October 1985, which was the rate of return approved in Docket No. 5560, GSU's last rate case. The examiner notes that this would comply with P.U.C. SUBST. R. 23.23(b)(2).

Ms. Moses further testified that the total refund will be allocated to the customer classes utilizing the same methodology as that approved by the Commission for GSU in Docket No. 6376. The refund methodology would also be the same.

The examiner hereby ORDERS GSU to implement the refunds in accordance with the terms of the stipulation. As provided in the stipulation, the total amount of the refund and the refund to each rate class is of an interim nature only and is subject to reconciliation in the same manner as that described earlier with respect to the fuel factor.

As agreed to or not opposed by the parties, the examiner hereby reserves ruling respecting the following provisions of Paragraph 5 of the stipulation. The first is the provision that to be eligible for a refund, customers (other than LIS or LPS customers) who either are not current customers or who previously were served by GSU at a different place during the refund period must contact GSU within sixty days after GSU publishes or mails notice of this requirement, and must provide GSU enough information to permit GSU to establish and verify their pertinent usage and location. The second is the provision that refunds to such customers who fail to respond timely will be transferred to Project Care for GSU's

Texas service area. A ruling on these provisions will be reserved until after any briefs or reply briefs are filed and an order is issued respecting the question concerning the escheat laws raised by the State Agencies.

SIGNED AT AUSTIN, TEXAS, on this the 30th day of October, 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews
ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE

APPROVED:

Rhonda Colbert Ryan
RHONDA COLBERT RYAN
DIRECTOR OF HEARINGS

bdb

CONSOLIDATED DOCKETS NO. 6477 AND 6525

| | | |
|-----------------------------------|---|---------------------------|
| INQUIRY OF THE PUBLIC UTILITY | § | |
| COMMISSION OF TEXAS CONCERNING | § | |
| THE AMOUNT OF FUEL OVERRECOVERIES | § | PUBLIC UTILITY COMMISSION |
| AND FIXED FUEL FACTOR OF | § | OF TEXAS |
| GULF STATES UTILITIES COMPANY | § | |

AND

| | |
|-------------------------------|---|
| APPLICATION OF GULF STATES | § |
| UTILITY COMPANY FOR AUTHORITY | § |
| TO CHANGE RATES | § |

STIPULATION

TO THE HONORABLE PUBLIC UTILITY COMMISSION OF TEXAS:

WHEREAS, Gulf States Utilities Company ("GSU" or "the Company") has realized fuel cost savings for its customers of approximately \$11 million, including interest for the period from August 1, 1985 through September 30, 1985; and

WHEREAS, the presently approved fixed fuel cost factor no longer represents the best estimate of the Company's fuel cost; and

WHEREAS, the Public Utility Commission of Texas ("PUCT" or the "Commission"), GSU, and all other parties to this proceeding desire to effectuate a refund of the above referenced amount and adjust the Company's fuel cost factor to more accurately reflect fuel expenses;

NOW, THEREFORE, the Commission staff, the Company, and the various Intervenor in the instant proceeding, through their undersigned representatives, hereby stipulate and agree as follows:

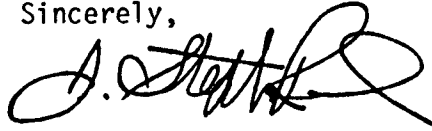
1. That GSU shall effectuate an interim refund of the net fuel cost savings inclusive of interest, that the Company has realized from August 1, 1985 through September 30, 1985, in accordance with the terms and conditions set forth below.

EXAMINER'S EXHIBIT A

Judge Drews
Page 2
October 29, 1985

By carbon copy of this letter, I am transmitting the unclaimed property law to each Commissioner and expressing this office's interest in the refund issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Stephen Ravel", with a stylized flourish at the end.

J. STEPHEN RAVEL
General Counsel

JSR/zs

Enclosure

cc: The Honorable Peggy Rosson
7800 Shoal Creek-Suite 400N
Austin, Texas 78731

The Honorable Dennis L. Thomas
7800 Shoal Creek-Suite 400N
Austin, Texas 78731

ANN W. RICHARDS
TREASURER



TREASURY DEPARTMENT
PO BOX 12608, CAPITOL STATION
AUSTIN, TEXAS 78711

STATE OF TEXAS

FBI STATE OFFICE BUILDING
CONGRESS AT 17TH ST
(512) 463 6000

October 29, 1985

Ms Elizabeth Drews
Administrative Law Judge
Public Utility Commission of Texas
7800 Shoal Creek-Suite 400N
Austin, Texas 78731

By Hand Delivery

Re: Docket No. 6525-Gulf States Utilities

Dear Judge Drews:

It has come to our attention that you are, on this date, holding a pre-hearing conference in the above referenced docket. Because the fixed fuel factor is at issue, refunds may be ordered by the Commission.

This office administers the State's Unclaimed Property Law. A copy of the current law is attached to this letter for your review and reference. If a refund is ordered by the Commission, the attached statute governs the disposition of those refunds. The attached statute requires that utility refunds that remain unclaimed for three years be turned over to the State Treasurer. Pursuant to the attached statute, it is this office's duty to protect the interests of "missing owners" of property.

We are certain that the Commission will consider the enclosed statute in dealing with the issue of unclaimed refunds or uncashed refund checks.

If you would like any further input from my office concerning this issue, please do not hesitate to call upon us. I am enclosing several extra copies of this letter so that it may be distributed by you to all parties to this Docket.

EXAMINER'S EXHIBIT B

AN EQUAL OPPORTUNITY EMPLOYER

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above and foregoing document was served on each of the following, via United States Mail, proper postage paid, or by Federal Express on this 26th day of October, 1985.

General Counsel
Public Utility Commission of Texas
7800 Shoal Creek Boulevard
Austin, Texas 78757

Mr. Don R. Butler
Butler, Casstevens & Porter
211 E. Seventh Street
727 Southwest Tower
Austin, Texas 78701

Mr. Frederick H. Ritts
Ely, Ritts, Brickfield & Betts
Watergate 600 Building NW, Suite 915
Washington, D.C. 20037

Mr. Lane Nichols, City Attorney
City of Beaumont
P. O. Box 3827
Beaumont, Texas 77704

Mr. H. P. Wright, City Attorney
City of Port Neches
P. O. Box 186
Port Neches, Texas 77651

Mr. George Wikoff, City Attorney
City of Port Arthur
444 Fourth Street
Port Arthur, Texas 77640

Ms. Joyce Roddy
The Concerned Citizens of Southeast
Texas
2743 Anne
Port Arthur, Texas 77642

Mr. Jim Boyle, Public Counsel
Office of Public Utility Counsel
8140 Mopac, Westpark III, Suite 120
Austin, Texas 78759

Mr. Rex D. VanMiddlesworth
Mayor, Day & Caldwell
700 Louisiana
1900 RepublicBank Center
Houston, Texas 77002

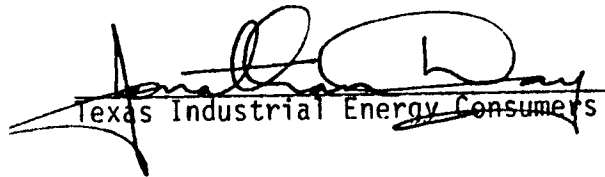
Mr. W. Scott McCollough
Assistant Attorney General
14th & Colorado, Supreme Court Bldg.
Austin, Texas 78711-2548

Mr. Earl Black, City Attorney
City of Groves
P. O. Box 3286
Port Arthur, Texas 77643

Mr. W. E. Sanderson, City Attorney
City of Nederland
2300 Highway 365, Suite 640
Nederland, Texas 77627

Mr. Richard Y. Ferguson
Mr. William H. Yoes
Benckenstein, Oxford, Radford
& Johnson
P. O. Box 150
Beaumont, Texas 77704


Cecil J. Johnson


Texas Industrial Energy Consumers

The City of Beaumont

City of Nederland

City of Port Arthur

City of Port Neches

William Yoes
City of Sour Lake *By Permission DMC*

William Yoes
City of Nome *By Permission DMC*

William Yoes
City of China *By Permission DMC*

City of Groves

The Concerned Citizens of Southeast
Texas

Attorney General of Texas

Cities

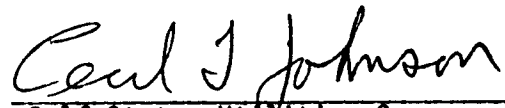
H D Pate
City of Bridge City
By permission DMC

11. The parties hereto further stipulate and agree that the total amount to be refunded hereunder, the amounts refunded to each rate class, and the revised interim fuel cost factors agreed upon in this Stipulation are of an interim nature only and shall be subject to further review and final reconciliation by the PUCT as part of the final order of the Commission in Docket 6525 in accordance with Substantive Rule 23.23(b).

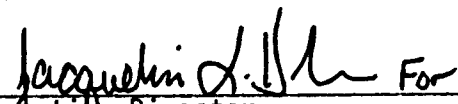
12. GSU will mail to those customers it can readily identify as submetered apartment owners or landlords as defined by this Commission's substantive rules, a notice advising that an obligation may exist to return all or a portion of the refund amount to their tenants.

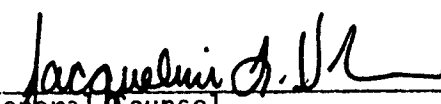
This Stipulation may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same agreement.

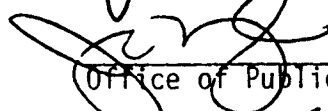
The undersigned signatories state that they have full authority to enter into and bind the entities they represent to this Stipulation.


Cecil I. Johnson
Gulf States Utilities Company

Approved by:


Jacquelin D. Hill For
Executive Director
Public Utility Commission of Texas


Jacquelin D. Hill
General Counsel
Public Utility Commission of Texas


Office of Public Counsel
Frederick Ritta
North Star Steel Texas
by permission DMC

| | | |
|-----------|-------|---------|
| Secondary | 2.924 | (cents) |
| Primary | 2.845 | # / KWH |
| 34.5KV | 2.826 | " |
| 69KV | 2.703 | " |
| 138KV | 2.703 | " |
| 230KV | 2.681 | " |

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JGB
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9. The terms of this Stipulation shall be implemented upon rendition of an appropriate ~~Interim~~ Order limited to this issue in this proceeding. To facilitate expeditious consideration of this Stipulation, the parties hereto waive notice of the Commission's consideration of such Interim Order. The presiding Hearings Examiner has scheduled a prehearing conference for October 29, 1985; the parties agree that such prehearing conference shall not be necessary if the Examiner adopts this Stipulation and further agree that in such event this Stipulation and the supporting testimony of GSU may be processed administratively without a hearing.

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10. The undersigned parties further stipulate that their respective testimony and exhibits, filed expressly and solely for purposes of GSU's Motion to Implement Interim Fuel Factor, should be admitted into evidence without cross-examination by any of the other signatories. All signatories hereto preserve any rights they otherwise have in the event the ~~Commission~~ ^{ALJ} does not adopt this Stipulation in its Interim Order in Docket No. 6525. In addition, all parties to this Stipulation preserve the right to file written exceptions, present oral argument, and otherwise defend the terms of this Stipulation in the further event the ~~Hearing Examiner(s)~~ ^{ALJ} fails to endorse the terms of this Stipulation; but if the ~~Hearings Examiner~~ ^{ALJ} does endorse the terms of this Stipulation, the parties waive the right to file exceptions and replies to exceptions and present oral argument.

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sufficient information to permit GSU to establish and verify their pertinent usage and location. Any such refund due such customer shall first be applied to any amount left owing for service. Any refund amounts that might otherwise be due such customers who fail to respond timely to the mailed and published notices, shall be transferred by GSU to Project Care for GSU's Texas service area.

6. That the refund factor per KWH for a rate class shall be determined by dividing the total dollars allocated to that class by the total KWH usage for that class for the refund period.

7. That the interim refund to any customer shall be the class refund factor times that customer's individual KWH usage during the refund period; provided however, that for any LIS or LPS customer who changed rates during the refund period his refund shall be calculated separately based on his KWH usage under each rate schedule, but further provided that such effect, if any, of a change from one rate to another shall be accounted for in the class allocation process so that the total refunds do not exceed the total net overcollections being refunded.

8. That GSU shall revise the fuel cost factors in its Tariff for Electric Service (tariff) such that the revised interim fuel cost factor shall be effective on the first bill issued in the first GSU billing cycle after this Stipulation is approved by the ^{ALJ} ~~Commission~~; and that the agreed to level of the revised fixed fuel factor is 2.788¢/KWH and is based on actual reconcilable fuel costs for September, 1985 divided by total megawatt hours available for distribution in that month, adjusted for a normalized system loss rate of 5.5 percent and that, by delivery voltage level, the revised factors shall be:

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AMC
[Signature]
[Signature]

2. That the amount of the interim refund, inclusive of interest, shall be allocated to each of the Company's rate classes on a month-to-month basis according to each class's KWH usage during each month of the August, 1985 to September, 1985 period (the refund period).

3. That, except as provided herein, the refund inclusive of interest shall be made by a credit on the first bill issued in the first complete GSU billing cycle after approval by the ~~Commission~~ ^{Administrative Law Judge} of this Stipulation. Such credit shall be the appropriate class refund factor times the customer's individual KWH usage during the refund period at that customer's point of service on the date of such billing.

4. For customers served on rate schedule LPS or LIS during the refund period, refunds shall be by check mailed within three weeks after the ~~Commission~~ ^{ALT} approves this Stipulation.

5. As to customers served under rate schedules other than LIS or LPS, where a customer is either not receiving service from GSU during the first billing cycle after ~~Commission~~ approval of this Stipulation or previously received service from GSU in Texas at a different point of service during the refund period, Gulf States shall by a one-time bill insert in its Texas retail bills and by a ~~one-time~~ ^{an} advertisement* in a newspaper of general circulation in each Texas county in which Gulf States provides retail service, give notice that a refund may be due such customers if such customer promptly contacts GSU in the manner to be set forth in the notice. To be eligible for a refund, which will be by check, such customers must respond to such notices within sixty days of the mailing or publication of the notice by providing to GSU

* for one day for three consecutive weeks