

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

PUBLIC UTILITY COMMISSION  
OF TEXAS

APPLICATION OF GULF STATES UTILITIES  
COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 6

ORDER AND NOTICE OF REGIONAL HEARING  
TO HEAR PUBLIC COMMENT

On October 1, 1985, Gulf States Utilities Company (GSU) filed a statement of intent to increase its rates within the unincorporated areas served by it. GSU is seeking authorization to increase its rates by \$89,601,486, or 10.8 percent in the first year (the Year 1 rates) and \$87,790,277 or 9.55 percent in the second year (the Year 2 rates), or a total of \$177,391,763, or 21.4 percent, over total Texas adjusted test year revenues, assuming Commission recognition of River Bend Unit 1 in rate base. In the alternative, should the Commission exclude River Bend Unit 1 from GSU's plant in service, GSU is seeking authorization to increase its rates by \$110,181,957, or 13.28 percent over total Texas adjusted test year revenues. The proposed rate increase will affect all customer classes. A copy of the application, specifying in detail each proposed change, is on file at the Commission's offices in Austin.

The examiner finds that it is expedient and necessary for the proper performance of the Commission's duties in this docket and in the public interest to conduct regional hearings for the purpose of collecting comments to be included in the record, pursuant to Sections 10 and 43(c) of the Public Utility Regulatory Act, Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985) and P.U.C. PROC. R. 21.101. At the regional hearings the Commission will hear protests and comments from members of the public. Those members of the public desiring to make such statements under oath shall have that opportunity.

The regional hearings in this docket will be held at the following times and locations:

Beaumont Civic Center  
701 Main Street  
Beaumont, Texas

Conroe City Council Chambers  
505 West Davis  
Conroe, Texas

Thursday, November 7, 1985  
2:00 to 5:00 p.m. and  
6:30 to 9:30 p.m.

Friday, November 8, 1985  
2:00 to 4:30 p.m. and  
6:00 to 8:00 p.m.

Pursuant to P.U.C. PROC. R. 21.27(2), GSU is hereby directed to provide a copy of this document to the governing bodies of all municipalities and counties affected by the proposed rate change, and to publish notice of the date, times and location of the regional hearings in conspicuous form and place at least once prior to the date of the regional hearings in a newspaper having general

circulation in each county containing territory affected by the proposed rate change. The published notice shall state the purpose of the regional hearings as set out above, and shall also include the statement that persons needing additional information may call the Public Utility Commission's Consumer Affairs Division at (512) 458-0223 or (512) 458-0227 or teletypewriter for the deaf at (512)458-0221.

SIGNED AT AUSTIN, TEXAS on this the 28<sup>th</sup> day of October 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews  
ELIZABETH DREWS  
ADMINISTRATIVE LAW JUDGE

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

APPLICATION OF GULF STATES UTILITIES  
COMPANY FOR AUTHORITY TO CHANGE RATES

PUBLIC UTILITY COMMISSION  
OF TEXAS

ORDER NO. 5

ORDER GRANTING IN PART AND DENYING IN PART GENERAL COUNSEL'S  
MOTION TO REQUIRE GULF STATES UTILITIES COMPANY TO CORRECT  
CERTAIN DEFICIENCIES IN ITS RATE FILING PACKAGE

Attached is a copy of the motion to intervene of the City of Bridge City, Texas, filed October 23, 1985.

On October 18, 1985, the Commission's general counsel filed a motion to require Gulf States Utilities Company (GSU) to correct certain alleged deficiencies in GSU's rate filing package (RFP). On October 24, 1985, GSU filed its response. On October 25, 1985, general counsel filed a reply to GSU's response.

I. Nature of Relief Granted

There are two Commission rules which prescribe remedies when a deficient RFP has been filed. PUC PROC. R. 21.69(a) provides that such an application is subject to being dismissed, and any time limits shall not begin to run thereon. PUC PROC. R. 21.65(b) provides that if a written order finding material deficiencies is issued, the applicant has 10 days to correct the deficiency. If it fails to do so, the earliest possible effective date of the proposed rate change is at least 35 days after the filing of a sufficient application with substantially complete information. Presumably, even if PUC PROC. R. 21.65(b) were the rule relied upon in the order, if the application remained in noncompliance for an extended period of time, eventually it would be subject to dismissal for failure to prosecute under PUC PROC. R. 21.82(a)(5).

GSU argued that a rate case cannot be dismissed on the grounds alleged by general counsel because the RFP was prescribed by the Commission staff, not adopted by the Commission in a ratemaking proceeding. The examiner disagrees. PUC PROC. R. 21.62(b) provides that: "All pleadings which are the subject of any official form shall contain the information, allegations, and other matter designated in that official form and shall conform substantially to that form." PUC PROC. R. 21.181 states that the standard Commission forms may be amended, deleted or added to at the Commission's discretion without having a rulemaking proceeding.

The Commission rules do not spell out when PUC PROC. R. 21.69(a), prescribing dismissal, or PUC PROC. R. 21.65(b), prescribing possible delay of

the effective date, should be utilized. However, it seems appropriate that a case be dismissed outright if the deficiency is such that all or a substantial part of the RFP would have to be resubmitted to correct the deficiency. Similarly, it should be dismissed if the deficiencies are such that the other parties would be unable to begin investigating the request before they are corrected. If the deficiencies are less significant or pervasive, however, relief should be granted under PUC PROC. R. 21.65(b).

Having reviewed the motion, the examiner is of the opinion that the deficiencies in GSU's filing identified by general counsel are not of a type justifying dismissal of the case at this time. Accordingly, relief instead is granted pursuant to PUC PROC. R. 21.65(b).

With its response to general counsel's motion on October 24, 1985, GSU filed revisions to some schedules and described proposed revisions to other schedules in the RFP, apparently in a effort to alleviate some of general counsel's concerns. In GSU's response, GSU requested that the examiner in this order rule on whether or not the revised schedules it filed with or described in its response would be sufficient. The examiner declines to do so, because the parties have had no opportunity (except general counsel who only had one day) to respond concerning this issue, as required in Section 13(d) of the Administrative Procedure and Texas Register Act, Tex. Rev. Civ. Stat. Ann. art. 6252-13a (Vernon Supp. 1985).) However, the examiner has tried to indicate where, even absent a review of such responses by the parties, she would consider GSU's revisions or proposed revisions to be inadequate. The examiner hereby ORDERS that any party which would consider GSU's revisions or descriptions of proposed revisions to be insufficient file comments to that effect within five working days from the date of this order. The findings of material deficiencies in this order concern GSU's RFP as originally filed.

In her reply, general counsel requested that a prehearing conference be convened to consider whether or not the parties consider GSU's revisions submitted pursuant to this order to have resolved the problem. The examiner has considered this suggestion, but concludes that it is not the best approach, for several reasons. First, the examiner does not know when GSU will submit its complete set of revisions. Second, the examiner does not know that any of the parties will have objections thereto. Third, ten days notice of a prehearing conference is required and this question is one which should be resolved expeditiously. Fourth, as discussed at the initial prehearing conference, the examiner is of the opinion that the questions presented in general counsel's motion are of a type which lend themselves more readily to written comments than to oral arguments. Accordingly, the following approach will be used instead. It is hereby ORDERED that when GSU has filed all of the revisions it intends to file in response to this order, it will expressly so indicate in its written filing. Such a statement and revisions are to be received by the other parties on the day they are filed. It is further ORDERED that any comments other

parties might have respecting any deficiencies in such filing shall be filed within five working days after receipt of such revisions. If no such comments are filed, an order concerning the sufficiency of the response will be issued based on the materials already submitted by the parties. If such comments are filed, GSU may expressly waive its right to respond thereto, in which case an order will be issued as soon as possible thereafter, or GSU may submit a written response no later than three working days after such written comments are filed. General counsel would in that event have three working days to file closing remarks.

In accordance with PUC PROC. R. 21.65, the examiner concludes that material deficiencies, described in Part II of this Order, exist in the RFP. Therefore, it is hereby ORDERED that GSU shall, within ten days after the date of this order, correct such deficiencies.

Finally, the examiner observes that all of the matters considered herein are subject to whatever decision she reaches respecting OPC's pending motion to dismiss, which will be addressed in a subsequent order.

## II. Findings of Material Deficiencies

The examiner's approach in this order has been generally to find that a deficiency is material as that term is used in PUC PROC. R. 21.65 (b) if information required to be included in a particular schedule by the Commission's RFP is not on that schedule. This is a fairly tough standard, and may or may not be appropriate in a different docket. However, GSU is a large and sophisticated utility, and its rate case is one of great complexity. The examiner believes that neither she nor the parties to the case should be required to search through a forty-volume application to ascertain whether or not required information is located anywhere therein. The Commission's RFP is not only intended to designate the information which will be required as part of the initial filing. It is also intended to provide a standard, convenient format for the presentation of voluminous information. This is necessary so that the other parties and the Commission do not have to search through the RFP, reformat or recalculate data, or, in the case of the parties, send requests for information, if the utility does not comply with the standard format. Rather, the Commission and the parties should be able to focus on more substantive issues during the limited time available by statute to investigate the rate request.

A. Schedule A

The Commission-prescribed RFP states with respect to Schedule A:

This schedule shall summarize the utility's overall cost of service, including but not limited to operations and maintenance expenses, depreciation expenses, income taxes, taxes other than income taxes, and the return developed from the supporting schedules described herein. Presentation shall be such that book amounts can be readily determined. Adjoining columns shall show any claimed adjustments to the book balances and total cost of service.

(Emphasis supplied.)

The examiner also notes that PUC PROC. R. 21.69(a) provides in part: "All adjustments to book amounts shall also be shown in a separate column or columns so that the book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed..." (Emphasis supplied.)

The examiner concludes that Schedule A requires a presentation of book data, proposed adjustments, and total figures, with the same categories and degree of detail being required with respect to the book data and total figures as with respect to the proposed adjustments. GSU's Schedule A indicates book amounts for only two items: total operation and maintenance (O&M) expenses and total depreciation and amortization expenses. In Schedule A, GSU did not prepare adjustments to O&M or to depreciation and amortization expenses in the aggregate, but to specific items included therein.

Moreover, the examiner does not believe that the statement in the RFP, "this schedule shall summarize the utility's overall cost of service, including but not limited to operations and maintenance expenses, depreciation expenses,..." means that two numbers constitute an adequate summary of the entire cost of service. The examiner reads "operations and maintenance expenses" and "depreciation expenses" in the passage quoted above to mean that a summary of the components of those expenses, not a total figure, is to be supplied.

In its response, GSU offered to file a revised Schedule A which contains the data shown on Schedule A-1.2 to accompany the data displayed on Schedule A. The examiner notes that while the same total O & M figure, \$1,044,382,486, shown on Schedule A is broken down in Schedule A-1.2, it is not broken down using the same categories as those shown on Schedule A. Accordingly, the examiner concludes that the book amounts which correspond to the claimed adjustments presented in Schedule A cannot be readily determined.

The examiner concludes that Schedule A is materially deficient and orders that GSU submit a new Schedule A with columns 3 and 7 therein fully detailed.

B. Schedule B

The RFP provides that Schedule B "shall summarize the original cost rate base of the utility and the requested rate of return." General counsel argued that GSU's Schedule B does not show the actual test year data on a line item basis, and shows only GSU's proposed adjustments, not the book data pertaining thereto. GSU correctly points out that the RFP does not expressly require that such information be presented in Schedule B. The original cost rate base is summarized in some detail in Schedule B-1.2, and the requested rate of return is shown on Schedule B. The examiner concludes that GSU's Schedule B is not materially deficient.

C. Schedule F

The RFP states that Schedule F "shall include the cost of debt capital and preferred stock capital, the claimed return on stockholders' or members' equity, and the component amounts of capital for the test year in addition to any adjustments thereto." (Emphasis in original). The examiner concludes that Schedule F does require dollar amounts, and an indication as to whether or not adjustment to test year figures were made and if so, what they are. The examiner finds Schedule F to be materially deficient.

D. Schedule F-3

The RFP provides that Schedule F-3 shall include certain financial data "for each of the last sixteen fiscal years and the test year". General counsel complained because the test year data was not broken out, and because some stock issuance expenses were shown as estimates only. Schedule F-3 does require that data for the test year be separately stated if the test year is not identical to the fiscal year. The examiner finds that GSU's Schedule F-3 is materially deficient.

E. Schedule F-6

The RFP states that Schedule F-6 "shall include the weighted average cost of debt capital" based on certain specified data. General counsel stated that GSU's Schedule F-6 fails to include the weighted average cost of debt capital. In its response, GSU indicated where on the schedule this information could be found. The examiner finds that GSU's Schedule F-6 is not materially deficient.

F. Schedule F-7

The RFP states that Schedule F-7 shall include the specified financial ratios, and further provides: "the method, projections, and assumptions used to compile all these ratios shall also be explained in this schedule." General counsel complained that no such explanation was provided. The RFP also states: "Additionally, these ratios shall be provided for the first and second years after proposed rates will be in effect calculated on the basis of full requested rate relief and no rate relief." General counsel also complained that the required projections for the first and second years after the proposed rates will be in effect was not provided. The examiner finds GSU's Schedule F-7 to be materially deficient in both respects. In its revised Schedule F-7, GSU indicated in a footnote where in the RFP the methods, assumptions and projections may be found. The examiner has examined the referenced pages and finds them not to be in useable form. GSU's footnote references nearly fifty pages scattered in various places in the RFP. It is unclear from GSU's footnote where the referenced information with respect to each ratio is to be found, and in some cases the terminology used to describe the ratios is different. The RFP requires that the method, projection and assumptions used to compute each ratio be included in Schedule F-7. It clearly is not. The examiner orders that GSU submit a new revised Schedule F-7 which includes data for the first and second years the rates will be in effect and which describes the method, projections and assumptions used to compute each ratio which is required by that schedule.

G. Schedule G-3

The RFP states that Schedule G-3 "shall present a detailed analysis of the over/under recovery of fuel for the Texas jurisdiction since the date of the company's last reconciliation up to most recent date available. This analysis shall include monthly entries to account 186 - Deferred Fuel as reported to the Commission on the monthly fuel cost reports." General counsel complained because monthly fuel data is not provided in Schedule G-3. GSU explained that it considered its fuel revenues and costs to have been reconciled through July 1985 in Docket No. 6376. However, GSU indicated that it is computing monthly fuel data for the entire period from February 1984 through July 1985, and will submit such data if this is ruled to be necessary. The examiner notes that the stipulation in Docket No. 6376, which was signed by counsel for GSU, among others, and approved by the Commission, states:

12. 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 the Company's next systemwide rate proceeding in accordance with Substantive Rule 23.23(b).



The examiner finds that Docket No. 6376 did not constitute GSU's last reconciliation. The examiner further concludes that GSU's Schedule G-3 is materially deficient and orders GSU to submit a revised Schedule G-3 which includes the monthly information required therein.

#### H. Schedule H

The RFP states that Schedule H "shall include balance sheets in accordance with this Commission's Uniform System of Accounts as of the end of the test year and for the comparative period immediately preceding. All footnotes required for a fair presentation of such balance sheets shall be presented." General counsel complained that GSU failed to provide the requisite footnotes to financial statements for the period ending on March 31, 1985, i.e., the test year end. Instead, what GSU's RFP presents are footnotes for the period ending on December 31, 1984. GSU pointed out that its Schedule H contains a footnote indicating that all notes to the financial statements will be found on Schedule H-4. Schedule H-4 includes the notes from GSU's 1984 Annual Report on FERC Form 1. Page 15 of Schedule H-4 includes the notes to GSU's interim financial statements (unaudited) presented in GSU's quarterly report to the SEC on Form 10-Q for the quarter ending March 31, 1985. This appears to satisfy the rather vague requirement in Schedule H. The examiner finds GSU's Schedule H not to be materially deficient.

#### I. Schedule N

Schedule N of the RFP provides:

This schedule shall include estimates of the requirements for, and sources of, future capital. Provide detailed explanations of all assumptions and estimates used. Show calculations where necessary for clarity. Show AFUDC calculation in detail.

General counsel complained that GSU's Schedule N shows no calculations for AFUDC nor does it indicate what GSU's CWIP balances are. GSU observed that Schedule N states: "Refer to workpapers of Mr. C. W. McBride for assumptions and supporting calculations." The examiner notes that Mr. McBride's workpapers are approximately an inch thick and appear to contain considerably more information than that required by this schedule. The examiner concludes that

GSU's Schedule N is materially deficient. In its response, GSU offered to submit a new Schedule N showing CWIP balances and AFUDC calculations for the period reflected in its Schedules N, N-1 and N-2. GSU is ordered to do so.

SIGNED AT AUSTIN, TEXAS on this the 28<sup>th</sup> day of October 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

  
ELIZABETH DREWS  
ADMINISTRATIVE LAW JUDGE

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

PUBLIC UTILITY COMMISSION  
OF TEXAS

ORDER NO. 4

ORDER GRANTING MOTIONS TO INTERVENE, REESTABLISHING  
EFFECTIVE DATE AND RESUSPENDING PROPOSED RATES, PREHEARING  
ORDER, NOTICE OF PREHEARING CONFERENCE AND NOTICE OF HEARING

The first prehearing conference in this consolidated docket was held on October 21, 1985. Appearances were entered by the following persons:

Cecil L. Johnson, George A. Avery and Donald M. Clements, Jr., for Gulf States Utilities Company (GSU);

Rex D. VanMiddlesworth for Texas Industrial Energy Consumers (TIEC);

Frederick H. Ritts for North Star Steel Texas, Inc. (North Star Steel);

W. Scott McCollough of the Attorney General's Office for the Texas state agencies which are customers of GSU, (State Agencies);

Don Butler for the Cities of Beaumont, Port Arthur, Port Neches, Groves and Nederland (Cities);

Jim Boyle for the Office of Public Utility Counsel (OPC); and

Alfred R. Herrera of the Commission General Counsel's office for the Commission staff and the public interest.

I. Pending Motions

A. State Agencies' Motion to Suspend Rates

In their motion to intervene, the State Agencies requested that GSU's proposed rates be suspended for a period of 150 days. The examiner stated that this relief has been granted in Order No. 1 in this docket.

B. General Counsel's Motion to Require GSU to Correct  
Certain Deficiencies in the Rate Filing Package

General counsel's motion was filed on October 18, 1985, one day after the deadline for filing motions to be considered at the prehearing conference which was established in Order No. 1. GSU objected to the motion being taken up at the prehearing conference on the grounds that GSU had had insufficient time to review the motion. The examiner noted that in accordance with PUC PROC. R. 21.65(b) and 21.4, she would need to issue an order by Monday, October 28 if she decided to grant general counsel's motion. As ordered at the prehearing conference, any party wishing to reply to the general counsel's motion was

required to file a written response by noon on Thursday, October 24, 1985, and the general counsel is required to file a rebuttal to such responses, if any, no later than 5:00 p.m. on Friday, October 25, 1985.

The examiner instructed GSU to add to the list of deficiencies alleged by general counsel the absence of Exhibit A which is referenced on page 3 of the Petition for Authority to Change Rates.

C. Motions to Intervene

Motions to intervene were filed by OPC on October 2, 1985; the attorney general (AG) on October 7, 1985; the City of Port Arthur on October 10, 1985; North Star Steel on October 11, 1985; and the City of Port Neches, the City of Nederland, the City of Groves and TIEC on October 15, 1985.

On October 18, 1985, GSU filed its objection to the motion to intervene filed by the AG.

1. Uncontested Motions to Intervene

At the prehearing conference the parties expressed no opposition to any motion to intervene except that of the AG. In addition, Mr. Butler indicated that he thought that the City of Beaumont had filed a motion to intervene. Mr. Butler stated that he would make certain that such a motion was filed, if it had not been already. No party had an objection to the City of Beaumont's motion to intervene. As discussed at the prehearing conference, the motions to intervene of OPC, the Cities of Port Arthur, Port Neches, Nederland, Groves and Beaumont, North Star Steel and TIEC are hereby GRANTED.

2. The Motion to Intervene Filed by the AG

The motion to intervene filed by the AG alleges the following justiciable interests: the State of Texas is a customer of GSU and the AG is charged with representing the interests of the state and of the people of the state insofar as they are taxpayers and recipients of government service.

Oral argument was heard at the prehearing conference concerning this motion. The AG argued in favor of the motion and GSU argued against it. The Cities and OPC indicated that they support the motion. The general counsel did not oppose the AG intervening as a representative of the State Agencies as customers of GSU but objected to the concept that the AG's justiciable interest might be broader.

After considering the participants' arguments and applicable legal authorities, the examiner rules as follows. The motion to intervene filed by the AG is hereby GRANTED on the ground that some state agencies are customers of

GSU and thus have a justiciable interest, and the AG asserts that it has the authority to represent such agencies in these proceedings. At the prehearing conference, GSU and general counsel indicated that they did not seek to limit the extent to which the AG could participate in this case if the motion to intervene was granted. Rather, GSU felt that the motion should be denied and the general counsel felt that it should be granted only on one limited ground. Having met the justiciable interest requirement, the AG may participate fully in this case on behalf of the intervenor State Agencies, and may take whatever position concerning the issues therein as he and the State Agencies deem appropriate.

The motion to intervene is granted for the following reasons. The definition of "Customer" in PUC SUBST. R. 23.3 includes any governmental agency provided with services by any utility. An agency may be admitted as a party in a Commission proceeding. (PUC SUBST. R. 23.3, PUC PROC. R. 21.2.) A justiciable interest is the required showing for intervention to be granted. (PUC PROC. R. 21.41.) A customer of a utility which has requested a rate increase clearly has a justiciable interest in that proceeding. Therefore, the State Agencies who are customers of GSU have a justiciable interest in this rate case, and their request for intervention must be granted.

GSU argued that the State Agencies are adequately represented by the general counsel and OPC, that are already participants in the case. However, as Mr. McCollough pointed out, the general counsel represents a broader interest, the public interest in general. (PURA Section 8(c)(7).) OPC may represent state agencies which are small commercial customers. (PURA Section 15A.) However, Mr. McCollough stated that some state agencies served by GSU, such as Lamar University and the Department of Corrections in Huntsville, are not small commercial customers. Mr. McCollough also cited Section 15A(h) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446(c) (Vernon Supp. 1985), which provides: "The appearance of the Public Counsel in any proceeding in no way precludes the appearance of other parties on behalf of residential ratepayers or small commercial customers." The examiner finds that the general counsel and OPC's participation in these proceedings is no bar to intervention by the State Agencies as customers of GSU.

GSU also cited court and Commission cases which denied the AG the right to participate in various proceedings. The decisions cited by GSU are not controlling in this case. In Hill v. Lower Colorado River Authority, 568 S.W. 2d 473 (Tex. Civ. App. - Austin 1978, writ ref'd n.r.e.) and Hill v. Texas Water Quality Board, 568 S.W. 2d 738 (Tex. Civ. App. - Austin 1978, writ ref'd n.r.e.), the AG sued to overturn in court decisions of state agencies which the AG was constitutionally required to represent in court proceedings. The standing alleged by the AG was an assertion that the AG may sue a state agency because of his own concept of the interests of the people of the State of Texas. The AG did not allege standing as a representative of a state agency. In Hill v.

Lower Colorado River Authority, the court of appeals did not uphold the AG's argument that under common law the AG has the right to "represent the people of the state" and has authority to act as the "lawfully constituted guardian of the public interest". The court further stated:

We find in reviewing the cases decided by the courts of Texas a consistent adherence to the principle that the attorney general derives his power and authority in office from the Constitution and the laws of the state duly enacted by the Legislature. It is further apparent that the duties and powers of the attorney general as expressed in the Constitution and in the statutes consistently ally the attorney general with the state as its counsel and advocate in its behalf, and nowhere do these grants of power arm the attorney general with authority to sue the state or any of its arms or agencies, even when the attorney general holds a view different from the decision or discretion exercised by an administrative agency.

In both cases, the court of appeals was clearly concerned about the conflict of interest the AG would face if because of his own concept of the public interest, the AG disagrees with a state agency's decision and is allowed simultaneously to sue the agency on that basis and to defend the agency in that suit.

Of course, there inevitably arise situations in Texas, some of which go to court, in which the decisions or interests of the various state agencies which the AG represents collide. As pointed out by Mr. McCollough, in such situations, assistant attorneys general, often from different sections of the AG's office, must argue opposite sides of a question. If there is cause for concern about conflicts of interest in such a situation, this is an outcome clearly implicit in Article 4, Section 22 of the Texas Constitution, which provides that the AG must represent the state in all suits.

GSU also cited the Commission's decision in Docket Nos. 4989 and 5011, involving a rate case of General Telephone Company of the Southwest (GTSW). In that case, the Commission denied the AG's motion to intervene on behalf of residential ratepayers in GTSW's service area. The order states: "The Attorney General argued that the citizens of body politic have a justiciable interest in this proceeding inasmuch as they are subject to unlawful rates being charged by GTSW, in violation of applicable statutory law. According to the Attorney General, such action by GTSW would be hurtful to some interest essentially public, and under the circumstances he is the proper party to defend an essentially public interest." (Docket Nos. 4989 and 5011, March 3, 1983 order at 3.) As in the Hill cases, the AG did not allege that he was representing another state agency.

This was clearly the fatal flaw in the AG's motion to intervene in the GTSW case. The order in that case states:

It has been brought out that these conflicts of interest can arise and have arisen within the various departments of the Attorney General's office. It is to be expected that state agencies will at times take actions that affect other agencies in a manner that would lead various departments of the Attorney General's office, charged by statute to defend these individual agencies, to defend conflicting positions in court. However, the Attorney General's potential conflict in this docket, and in the Hill cases, is that he is attempting to be counsel to the agency and to the general public or ratepayer. Unless legislation or precedent specifically allow the Attorney General to represent the public, while at the same time requiring his office to defend state actions which affect the public he claims to represent, the Motion must be denied.

(Id. at 6, emphasis supplied.)

Commission policy favors intervention, for very good reasons. As noted in the GTSW case: "The ratemaking process is complex and technical, and the full representation of all classes of customers can put the complexities in proper perspective. The more varied the voices which reach the examiner, and ultimately the Commission, the fairer the process." (Id. at 3.)

This examiner believes that any customer of a utility which is seeking a rate increase has standing to intervene to protect his or her interests as a customer in that case. This would include any state agency, including the AG's office, if the AG's office was a customer of that utility. Furthermore, if any customer state agency is permitted to intervene in a utility's rate case, then like all parties, it would have standing to appeal the Commission's decision. (PURA Section 69.) The AG would then be responsible for representing such state agencies in such a court appeal as well as representing this Commission. (Tex. Const. Art. 4, Sec. 22.) Again, the possible conflict of interest which might arise in such a situation appears to be contemplated by the Texas Constitution.

As noted by the parties, the AG has been allowed to represent other state agencies which are customers of the utility in other utility rate cases at this Commission. (See e.g., Docket No. 5969 involving Southwestern Bell Telephone Company.)

GSU argued that the AG has not produced proof that it is authorized to represent the state agencies it purports to represent. As a practical matter, the Commission ordinarily must take on faith that an attorney represents those clients which he says he represents. Generally, such a question has nothing to do with whether or not the client has a justiciable interest and thus standing to intervene.

The examiner notes that at the prehearing conference, Mr. Butler indicated that he would update as necessary the list of cities he represents. Mr. VanMiddlesworth agreed to supply a list of industrial customers he represents on or before the date the hearing starts and amend the list as necessary. Mr. McCollough indicated that he thought he could do the same but that he did not know how long this would take. Mr. McCollough is instructed to provide a list of the State Agencies he represents as soon as he can, and shall do so no later than the beginning of the hearing. None of these instructions should be deemed to affect any rights a party might have to obtain such information sooner through discovery.

D. GSU's Motion to Reduce Interim Fuel Factor  
and to Refund Fuel Cost Overrecoveries

On October 16, 1985, GSU filed a motion to reduce its interim fuel factor and to refund fuel cost overrecoveries. 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. GSU agreed to prepare testimony supporting any settlement which might be reached. The parties agreed that after conducting all other matters to be taken up at the prehearing conference (which matters are described in this order), the prehearing conference should be recessed, not adjourned. The parties agreed that it could be reconvened if a settlement is reached upon at least 24 hours notice to all parties, unless this right is waived. They further agreed that if no settlement is reached, the prehearing conference would be reconvened on October 29, 1985 or as soon as possible thereafter for the purposes of taking evidence on any contested issues involved in GSU's motion.

The parties are hereby put on notice that unless they are notified to the contrary, the prehearing conference will be reconvened on Tuesday, October 29, 1985 at 8:00 a.m. for the purpose of taking evidence on uncontested issues, if any, associated with GSU's motion and receiving into evidence a stipulation, if any, respecting such motion and evidence in support thereof.

E. OPC's Motion to Dismiss

Oral argument was also taken concerning OPC's motion to dismiss. This motion will be ruled on by subsequent order.

II. Effective Date

At the prehearing conference, GSU orally agreed on the record to postpone the effective date of the proposed rate increase by 45 days, until December 20, 1985. Consequently, the examiner hereby RESUSPENDS the effective date of the proposed rate increase for the full 150 day statutory suspension period, until May 19, 1986.



### III. Consolidation of Appeals

The following procedure is established for the consolidation of appeals from city ratemaking ordinances with this environs docket:

1. Notice of the PURA Section 26(a) appeal and of any motion to consolidate, together with a copy of this order, shall be served by GSU on the appellee city. The motion to consolidate should include the mailing address of the appellee city.
2. Any opposition to the motion shall be filed in writing and shall contain all grounds and arguments for such opposition. The opposition shall be filed with the Commission no later than ten days after receipt of the appeal, motion, and order. Rulings on motions to consolidate appeals will be made on the basis of the written filings.

### IV. Other Motions

Except as provided otherwise by order, the following procedure shall govern motions filed subsequent to those considered at the first prehearing conference. Responses to such motions, if any, shall be filed within five working days after receipt of the motion. Rebuttal, if any, by the movant to such responses shall be filed within five working days after receipt of the response. Any party wishing a prehearing conference to be scheduled to consider such a motion shall include such request in one of these filings. Unless decided otherwise by the examiner, orders will be issued respecting such motions based upon the written filings.

A copy of the motion to intervene of the Concerned Citizens of Southeast Texas, filed October 21, 1985, is attached. Persons who move to intervene shall immediately be treated like parties, and may issue discovery requests and receive all documents and other information, until such time as their motion to intervene is finally acted upon.

A current service list is attached. Parties are expected to update their own lists during the pendency of the case. Questions or information concerning the list should be directed to Ms. Blanche Bradley at the Public Utility Commission, (512) 458-0238.

### V. Hearing and Other Procedural Dates

#### A. Requests for Information

1. The last date for filing Requests for Information (RFIs) will be Wednesday, January 15, 1986.

2. Answers to RFIs shall be filed with the Commission and served upon the propounding party, all other parties, and the Commission general counsel within twenty days after receipt of the RFIs.
3. If requested by the propounding party, answers to RFIs must be filed under oath.
4. Objections to RFIs shall be filed and served within five working days of the date of receipt of the RFIs. Objections to RFIs must be filed as a separate pleading, specifically entitled "Objections of (name of objecting party) to (style of RFI objected to)." The objection must be presented in the following format: The full text of the question objected to must be typed immediately above the objections. The specific grounds of the objections must be stated concisely. If the objections go to only a portion of the question, the portion to which they apply must be specified.
5. Answers to RFIs which indicate that the information is too voluminous to reproduce, will be made available, is considered to be confidential, or is unavailable must be filed by the fifth working day after receipt of the RFI. If such an answer is unacceptable to the party who sent the RFI, such party shall promptly notify the party who filed the answer. The dispute will then be handled in the same manner as that described in subparagraph 6 below.
6. The parties shall diligently and in good faith negotiate any RFI disputes. In the event that diligent negotiation fails, the party refusing to respond to the RFI in the manner requested shall file, within seventeen days after receiving the RFI, a "Request for Prehearing Conference to Resolve Disputed Requests for Information." The Request for Prehearing Conference shall once again set out, verbatim, the RFI in dispute along with the detailed grounds for refusing to answer the RFI, or to respond to it in the manner requested. At the prehearing conference, oral responses may be made by the party propounding the RFI in dispute to any matters alleged by the party refusing to answer.
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. 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 some provisions, alternative provisions shall be submitted, with a

4. All objections to prefiled direct evidence concerning Revenue Deficiency and all requests to take any witnesses presenting evidence on voir dire must be made in writing and filed and served upon the party whose testimony is sought to be stricken by 12 noon on Thursday, February 20, 1986. Failure to meet this deadline will result in waiver of the objection or request.

C. Final Prehearing Conference

A final prehearing conference will be held beginning at 10:00 a.m. on Friday, February 21, 1986, at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas. The conference will be limited to procedural matters. The scope of procedural matters will include the consideration of pending motions, objections to prefiled evidence, requests to take witnesses on voir dire, and the presentation of exhibits to be offered at the hearing to the court reporter for marking. The examiner intends to hear arguments on these matters and to rule on them to the extent possible at that time. In the event that the examiner grants a request to take a witness on voir dire, the actual voir dire examination will be conducted at the time the witness takes the stand. This will eliminate the problem of witnesses having to travel twice to Austin or to stay longer than originally planned. In addition, deadlines for filing objections to the testimony of or requests to take on voir dire witnesses presenting direct testimony concerning rate design will be considered.

Scheduling of witnesses, grouping of parties and establishing an order of proceeding and of cross-examination also will be completed. Parties whose witnesses may have scheduling problems must file, by 9:00 a.m. on Friday, February 21, 1986, a list of such witnesses and the day(s) such witnesses will be available. Parties shall notify the examiner and the parties as soon as possible of additional scheduling problems that arise.

Other procedural matters will be taken up as necessary.

D. Hearing Date

Pursuant to P.U.C. PROC. R. 21.101, the hearing on the merits will be held in this docket beginning on Monday, February 24, 1986, at 10:00 a.m. at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas. The hearing on the merits will be bifurcated. The first part will be limited to revenue requirement issues. The second part will be limited to cost allocation and rate design issues. The cost allocation and rate design portion will commence on the first working day following conclusion of rebuttal testimony on the revenue requirement portion. In the event all revenue deficiency issues are settled prior to the hearing, the hearing will commence on Monday, March 3, 1986, on the remaining cost allocation and rate design issues.

## VI. Other Procedural Guidelines

### A. Evidence Generally

The Texas Rules of Evidence will be followed in this proceeding, with only infrequent recourse being taken to Section 14(a) of the APTRA. In response to an objection, the burden is on the proponent of the evidence to show its competence, materiality and relevance. Offers of evidence "for what it's worth" will be rejected.

### B. Exhibits

Parties are encouraged to be certain that their exhibits are of a size and volume which will not encumber the Commission records and will not pose difficulties in duplication. Voluminous or complicated data will not be admitted in bulk. Counsel shall be prepared, before offering any exhibit, to state that he or she has read the exhibit in full, and to show the admissibility of the parts offered. Exhibits should be expurgated, summarized, or excerpted as necessary; the underlying data from which the exhibits are taken must be made available for the parties' inspection.

### C. Experts

The testimony of expert witnesses should, to be valuable, explain their investigation, their analysis and their conclusions. Counsel are directed to work with expert witnesses whose testimony they will offer to eliminate cumulative, argumentative or otherwise objectionable passages.

### D. Cross-Examination

The scope of redirect examination will be limited to the scope of cross-examination; the scope of recross will be limited to that of redirect. The purpose of cross-examination is to put important information into the record; therefore, conducting discovery during cross-examination will not be allowed.

### E. Offers of Proof

Written evidence excluded for reasons other than bulk or volume will automatically be included in the record as an offer of proof if the proponent does not withdraw it. Parties wishing to make offers of proof by live question and answer as a result of exclusion of evidence may do so after the hearing is recessed for the day.

F. Objections

Parties who wish to object to questions or answers not susceptible to filed written motions to strike (i.e., during cross-examination, redirect or recross) are urged to simply stand, indicate that they object, state concisely the grounds of the objections, and identify the number of the applicable rule of evidence. Oral presentation on any objection shall be limited to the party or parties making the objection and the party or parties against whom the objection is directed, unless the examiner extends a broader invitation for argument.

G. Ex Parte Communications

Pursuant to P.U.C. PROC. R. 21.7, ex parte communications are prohibited during the pendency of this docket. The parties should undertake to communicate with the examiner through written documents, and through oral communication only in the case of dire emergency.

H. Pleadings

An original and three (3) copies of every pleading shall be filed with the Commission Filing Clerk, as required by P.U.C. PROC. R. 21.3, unless otherwise instructed by the examiner or unless a rule applicable to a particular type of pleading contains a contrary requirement. Additionally, a copy of every pleading shall be mailed or delivered to each party of record and the Commission General Counsel. The service requirements of P.U.C. PROC. 21.64 shall be followed.

SIGNED AT AUSTIN, TEXAS on this the 24<sup>th</sup> day of October 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews  
ELIZABETH DREWS  
ADMINISTRATIVE LAW JUDGE

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## SERVICE LIST

DOCKET No. \_\_\_\_\_

ACCOUNTING \_\_\_\_\_ ECONOMIC RESEARCH \_\_\_\_\_ ENFORCEMENT \_\_\_\_\_ LEGAL \_\_\_\_\_

### PARTIES:

### REPRESENTATIVE/ADDRESS

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Vice President-Rates and Regulatory Affairs  
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Rex D. VanMiddlesworth  
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NORTH STAR STEEL TEXAS, INC.

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CONCERNED CITIZENS OF SOUTHEAST TEXAS

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Concerned Citizens of Southeast Texas  
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STATE AGENCIES

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CITY OF BEAUMONT

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Public Utility Commission of Texas  
7800 Shoal Creek Blvd.  
Austin, Texas 78757  
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of the

DOCKET NOS. 6477 and 6525

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

PUBLIC UTILITY COMMISSION  
OF TEXAS

APPLICATION OF GULF STATES UTILITIES  
COMPANY FOR AUTHORITY TO CHANGE RATES

ORDER NO. 3

ORDER DENYING MOTION TO DISMISS DOCKET NO. 6477 FOR LACK OF  
JURISDICTION AND CONSOLIDATING DOCKET NOS. 6477 and 6525

On October 2, 1985, the Cities of Port Arthur, Groves, Port Neches and Nederland filed a motion to dismiss Docket No. 6477, the Commission's inquiry into the fixed fuel factor of Gulf States Utilities Company (GSU) as it related to those Cities. The purpose of this inquiry is to determine whether or not GSU's fuel factor should be further reduced. The referenced Cities argued that they have exclusive original jurisdiction over all electric utility rates charged within their respective city limits, and that therefore the inquiry should be dismissed for lack of jurisdiction as to them.

On October 2, 1985, the examiner issued an order indicating that she intended to consider at the October 7, 1985 prehearing conference consolidation of Docket Nos. 6477 and 6525, GSU's general rate case which has just been filed. A copy of this order was sent to parties in both dockets.

The first prehearing conference in Docket No. 6477 was held on October 7, 1985. The following persons appeared: Alfred R. Herrera of general counsel for the Commission staff and the public interest, Cecil L. Johnson for GSU, Ralph Gonzalez for Texas Industrial Energy Consumers, Dick Brown for North Star Steel, William H. Yoes for the Cities of China, Sour Lake and Nome, and Geoffrey Gay for the Office of Public Utility Counsel (OPC). No one appeared for the Cities of Port Arthur, Groves, Port Neches and Nederland.

I. Motion to Dismiss for Lack of Jurisdiction

Argument was heard on the motion to dismiss for lack of jurisdiction. Mr. Herrera and Mr. Johnson argued against the motion. In response to a question from the examiner, Mr. Yoes indicated that the cities which he represents wish to participate in the Commission proceedings. No one argued in favor of the motion.

The motion to dismiss for lack of jurisdiction is hereby DENIED. As pointed out by Mr. Herrera, this issue was considered by the Commission in Docket Nos. 6032 and 6072, a fuel case involving Central Power and Light Company. In that case the examiner held that the Commission, not municipalities, has exclusive original jurisdiction. (Docket Nos. 6032 and 6072, January 18, 1985 Examiner's Order). The order was appealed to the Commission and overruled by operation of law (Id., February 22, 1985 Examiner's Order.)



## II. Consolidation

Consolidation of Docket Nos. 6477 and 6525 was then discussed. Mr. Herrera, Mr. Johnson and Mr. Gonzalez argued in favor of consolidation. Mr. Johnson stated that dismissal to avoid duplication of proceedings would also be appropriate. The other parties did not express an opinion concerning this option. Mr. Brown stated that he did not oppose consolidation. Mr. Gay did not expressly oppose consolidation, but observed that OPC had a pending motion to dismiss Docket No. 6525, and that reduction of the fuel factor by interim order before a final order in Docket No. 6525 is obtained might be appropriate. The examiner observed that Docket No. 6477 could be severed if Docket No. 6525 were to be dismissed, and that if interim reduction in GSU's fuel factor is deemed appropriate, a motion to that effect could be considered in a consolidated case just as in an unconsolidated Docket No. 6477. As stated in Order No. 2, OPC's pending motion to dismiss Docket No. 6525, GSU's rate case, will be considered at the prehearing conference on October 21, 1985.

The examiner finds that Docket Nos. 6477 and 6525 involve common questions of law or fact, and that separate hearings would result in unwarranted expense, delay or substantial injustice. Duplication of proceedings would result if Docket No. 6477 were not consolidated with Docket No. 6525. The cases are at a similar point in terms of the stage of the proceedings. Both provide the same opportunities for discovery and presentation of evidence and argument in the next few months. The only issue in Docket No. 6477, possible further reduction of GSU's fuel factor, is necessarily an issue in the rate case. Accordingly, it is hereby ORDERED that Docket No. 6477 and 6525 are consolidated.

As discussed at the prehearing conference, parties to Docket No. 6477 are parties to the consolidated case, but are requested to submit new motions to intervene so that all parties to Docket No. 6525 are aware of who is on the service list, and so that any changes in client or address are taken into account.

SIGNED AT AUSTIN, TEXAS on this the 16<sup>th</sup> day of October 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews  
ELIZABETH DREWS  
ADMINISTRATIVE LAW JUDGE

DOCKET NO. 6525

APPLICATION OF GULF STATES UTILITIES  
COMPANY FOR AUTHORITY TO CHANGE RATES

PUBLIC UTILITY COMMISSION  
OF TEXAS

ORDER NO. 2

ORDER SETTING DEADLINE FOR FILING RESPONSES TO MOTION TO DISMISS

On Friday, October 4, 1985, the Office of Public Utility Counsel (OPC) filed a motion to dismiss this case. This motion will be considered at the first prehearing conference scheduled for Monday, October 21, 1985. It is hereby ORDERED that any party who wishes to respond to this motion shall file such a response in writing no later than Tuesday, October 15, 1985.

SIGNED AT AUSTIN, TEXAS on this the 7<sup>th</sup> day of October 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews  
ELIZABETH DREWS  
ADMINISTRATIVE LAW JUDGE

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APPLICATION OF GULF STATES  
UTILITIES COMPANY FOR AUTHORITY  
TO CHANGE RATES

PUBLIC UTILITY COMMISSION  
OF TEXAS

FIRST ORDER AND NOTICE  
OF PREHEARING CONFERENCE

On October 1, 1985, Gulf States Utilities Company (GSU) filed a statement of intent to increase its rates within the unincorporated areas served by it. GSU is seeking authorization to increase its rates by \$89,601,486, or 10.8 percent in the first year (the Year 1 rates) and \$87,790,277 or 9.55 percent in the second year (the Year 2 rates), or a total of \$177,391,763, or 21.4 percent, over total Texas adjusted test year revenues, assuming Commission recognition of River Bend Unit 1 in rate base. In the alternative, should the Commission exclude River Bend Unit 1 from GSU's plant in service, GSU is seeking authorization to increase its rates by \$110,181,957, or 13.28 percent over total Texas adjusted test year revenues. The proposed rate increase will affect all customer classes. A copy of the application, specifying in detail each proposed change, is on file at the Commission's offices in Austin.

The Commission has jurisdiction over this filing pursuant to Sections 16(a), 17(e) and 43(a) of the Public Utility Regulatory Act (PURA), Tex. Rev. Civ. Stat. Ann. art. 1446c (Vernon Supp. 1985). Pursuant to P.U.C. PROC. R. 21.83, a prehearing conference will be conducted herein on Monday, October 21, 1985, beginning at 10:00 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. Any motions to intervene and any other motions filed with the Commission and served upon the parties on or before noon on Thursday, October 17, 1985;
2. An appropriate timetable for discovery, prefiling of direct testimony and other matters leading to the hearing on the merits;
3. Scheduling of the hearing on the merits; and
4. 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.

In accordance with P.U.C. PROC. R. 21.44, motions to intervene and written protests must be filed with the Commission no later than Friday, November 15, 1985. In accordance with PURA Section 43(a) and P.U.C. PROC. R. 21.22(b)(2), GSU is hereby directed to give notice of the proposed rate change to all affected

by mail or hand delivery, by no later than Thursday, October 4, 1985, in accordance with PURA Section 43(a) and P.U.C. PROC. R. 21.22(b)(1). GSU is hereby directed to complete newspaper publication prior to Tuesday, November 5, 1985, and to furnish the Commission with publishers affidavits as soon as the same are available. In accordance with PURA Section 43(c) and P.U.C. PROC. R. 21.22(b)(3), GSU is hereby directed to provide a copy of this notice to the Commissioners' Court of each county in which the proposed rate changes would take effect as well as to each affected municipality.

Pursuant to PURA Section 43(d), GSU's proposed rate increase is hereby SUSPENDED for 150 days beyond the otherwise effective date of November 5, 1985, until April 4, 1986, to allow the Commission staff and other interested parties ample opportunity to adequately review the application.

Any party desiring a transcript of any prehearing conference or hearing in this docket must notify the examiner no later than three (3) working days before such conference or hearing that a court reporter's presence is requested.

The first prehearing conference in a pending case, Docket No. 6477, Inquiry of the Public Utility Commission of Texas Concerning the Fixed Fuel Factor of Gulf States Utilities Company, is scheduled for 1:30 p.m. on Monday, October 7, 1985. Docket No. 6477 was severed out of an earlier Commission inquiry, Docket No. 6376. The Examiner's Report in that docket, adopted by the Commission, indicates that if GSU filed a rate case as expected, consolidation of the new inquiry docket with the rate case would be considered at that time. In this examiner's opinion, consolidation of Docket Nos. 6477 and 6525 might well be appropriate under P.U.C. PROC. R. 21.85. Accordingly, all parties are put on notice that the examiner intends to consider such consolidation pursuant to her own motion, as provided in that rule, at the October 7, 1985 prehearing conference.

A copy of this notice is being mailed to all persons who are listed on the service list of Docket No. 5560, GSU's last systemwide rate case, 5820, Step II of that case, or 6477 (the service list of which is presently identical to that of Docket No. 6376). Future notices and orders will be sent to persons based on the service list to be developed in this docket.

SIGNED AT AUSTIN, TEXAS, on this the 2<sup>nd</sup> day of October, 1985.

PUBLIC UTILITY COMMISSION OF TEXAS

Elizabeth Drews  
ELIZABETH DREWS  
ADMINISTRATIVE LAW JUDGE

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

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

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## 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 Commission considered appeals of examiner's Order No. 21 concerning disposition of unclaimed fuel refunds. This order is hereby REVERSED. The Commission finds that the examiner could not by interim order create a vested property right in the refunds. The examiner is instructed to include in her examiner's report a recommended mechanism which would allow the unclaimed refunds to be distributed to GSU's current ratepayers on a pro rata basis after a final order is entered in this case.

SIGNED AT AUSTIN, TEXAS on this the 19<sup>th</sup> day of February 1986.

PUBLIC UTILITY COMMISSION OF TEXAS

SIGNED:

Dennis L. Thomas  
DENNIS L. THOMAS

SIGNED:

Jo Campbell  
JO CAMPBELL

I dissent. I would uphold Order No. 21.

SIGNED:

Peggy Rosson  
PEGGY ROSSON

ATTEST:

Rhonda Colbert Ryan  
RHONDA COLBERT RYAN  
SECRETARY OF THE COMMISSION