

# SUPREME COURT OF LOUISIANA

*No. 98-CA-0881*

ENTERGY GULF STATES, INC.

Versus

LOUISIANA PUBLIC SERVICE COMMISSION ET AL.

LEMMON, J., Dissenting in Part

The Public Service Commission disallowed the excess replacement fuel cost involved in an extended outage when a valve recently purchased from a qualified nuclear vendor failed to withstand the force applied to it. Although the qualified vendor immediately repaired the valve under warranty, the planned outage had to be extended seventy-two hours.

Gulf States inspected the valve upon delivery, but only a destructive inspection could have detected the inadequacy in the valve seat. Gulf States fully complied with the procurement control section of the applicable regulations,<sup>1</sup> and quality assurance program, accepted by the Nuclear Regulatory Commission, could not reasonably have avoided this problem. The Commission, however, held Gulf States liable for the vendor's acts and omissions, reasoning that the party who contracted with the vendor should bear the loss rather than the ratepayers, who have no control over Gulf States' vendors.

The fact that ratepayers will bear the loss of outage extensions that are not caused by imprudence has no relevance to the determination of whether the utility acted imprudently. Prudence is defined as an analog to the common law negligence standard

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<sup>1</sup>The Commission's staff expert, in forming his opinion, referred to the design control section of the regulations.

for deciding whether to exclude value from the rate base. Under the prudent investment standard, “the utility must demonstrate that it ‘went through a reasonable decision making process to arrive at a course of action and, given the facts as known at the time, responded in a reasonable manner.’” Gulf States Util. Co. v. Louisiana Pub. Serv. Comm’n, 578 So. 2d 71, 85 (La.), cert. denied, 502 U.S. 1004 (1991).

I cannot conclude from the evidence in this case that Gulf States’ imprudence caused this particular outage extension.