

TCEQ DOCKET NOS. 2004-1671-UCR and 2004-1120-UCR
SOAH DOCKET NOS. 582-05-2771 and 582-05-2770

APPLICATION BY AQUA UTILITIES, §
INC. AND AQUASOURCE §
DEVELOPMENT COMPANY d/b/a §
AQUA TEXAS, INC., TO CHANGE §
THEIR WATER AND SEWER TARIFFS §
AND RATES IN VARIOUS COUNTIES, §
AND APPEAL OF RATE-MAKING §
ACTIONS OF VARIOUS §
MUNICIPALITIES DENYING §
REQUESTED CHANGES TO WATER §
AND SEWER TARIFFS AND RATES §

BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

2008 JUL 16 AM 8:08
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

AQUA TEXAS' REPLY TO THE EXECUTIVE DIRECTOR'S REPLY TO AQUA TEXAS'
RESPONSE TO ORDER NO. 51 AND THE SOUTHEAST AND SOUTHWEST
REGION'S RESPONSE TO ORDER NO. 51

On July 8, 2008, the Texas Commission on Environmental Quality ("TCEQ" or "Commission") Executive Director ("ED") filed ED's Reply to Aqua Texas' Response to Order No. 51 ("ED's Reply"). Also on July 8, 2008, the Southeast Region and the Southwest Region filed a Response to Order Number 51, and the Separate Responses filed by the Applicant Aqua Texas and the TCEQ's Executive Director ("SE and SW Regions' Response"). Pursuant to the ALJs instruction during the July 9, 2008 telephone hearing, Aqua Texas now files this consolidated response.

Deferred Expense Surcharge

On July 1, 2008, Aqua Texas filed its Response to Order No. 51, which included a revised calculation of the deferred expense balance to reflect the revenue requirement approved by the Commission to correctly account for the actual resulting deferral balance. See Exhibit C to Aqua Texas' Response to Order No. 51. The ED's Reply appears to disagree with Aqua Texas' calculation

because it results in a higher deferral balance. There are two reasons why the deferral balance is higher. First, the deferral plan cited in the ED's Reply is AT-81, which was a month-by-month breakdown of the deferred expenses and-recovery plan based on *ninety percent* of the actual total deferred expenses. ED Reply at 2. The total deferral – *i.e.*, the *one hundred percent* plan – is that attached to the July 7, 2004, letter from Bob Laughman to TCEQ ED Glenn Shankle, which is in evidence as AT-59. The *one hundred percent* plan is the correct deferral plan to use because it accurately reflects the total deferred expenses, all of which the Commission approved. In other words, none of the deferred expenses (*e.g.*, purchased power, taxes, depreciation) were disallowed. The second reason the deferral balance in Exhibit C is higher is that by lowering the approved revenue requirement, the Commission effectively increased the level of unrecovered expenses that were previously deferred under the plan. That causes the deferred expense balance to increase over time as reflected in Exhibit C. Aqua Texas acknowledges that the deferral balance is higher, but submits that the deferral balance stated in Exhibit C reflects the true state of affairs today as a result of the Commission's ruling on the revenue requirement. For these reasons, Aqua Texas believes that the deferral balance and surcharge reflected in Exhibit C to Aqua Texas' Response to Order No. 51 is the correct surcharge.

In response to the ALJs indication that they are inclined to follow the Executive Director's approach to calculating the deferral balance and surcharge, Aqua Texas asks the ALJs to consider the following points. First, as noted above, the one hundred percent plan should be used to calculate the deferral balance because all of those deferred expenses were approved by the Commission. Second, the ED has used active connections for all regions, including Ingram (for a total of 47,437) rather than active connections for the North, Southeast and Southwest regions (a total of 45,871) to

calculate the surcharge.¹ Aqua Texas believes that only active connections for the North, Southeast and Southwest should be used to calculate the surcharge because the Ingram region has been severed from this case. Third, on Attachment A to the ED's Reply, the ED has used a figure of \$68,174 per month to reduce the deferral balance. That figure is taken from Aqua Texas' Exhibit C, as attached to Aqua Texas' Response to Order No. 51. If the ALJs are not inclined to follow the deferred balance accounting proposed in Exhibit C, then taking an isolated number out of Exhibit C is not appropriate, because it mixes apples and oranges. The table attached as Exhibit A uses the deferral/recovery plan in evidence as AT-59, but continues the Phase 3 rates through December of 2008 because Aqua Texas did not implement the Phase 4 rates in August of 2007.

Finally, if the ALJs use the lower deferral balance recommended by the Executive Director (as corrected in Exhibit A), Aqua Texas requests that interest on the accrued balance be included. While Aqua Texas acknowledges the Commission's preliminary indication that interest should not be included, several important factual and policy considerations militate in favor of reconsidering this issue. During the June 18, 2008 Agenda, the Commission appeared to base its determination on a comment by Commissioner Soward. To paraphrase, Commissioner Soward indicated that the Commission did not give interest on "these surcharges." In actuality, the Commission has awarded interest on a rate case expense surcharge. In *In the Matter of the Appeal by Tecon Water Company L.P.*, SOAH Docket No. 582-03-1925, TCEQ Docket No. 2001-1080-UCR, the Commission's Order

¹ The SE and SW Regions' Response does not dispute (nor could it) that 45,871 connections are the correct number of active connections for the Southeast, Southwest and North regions. Instead, they allege a conspiracy, wholly unsupported by evidence, between Aqua Texas and the ED to get the ED to "throw away its rule book" SE and SW Regions' Response at 2. The reality is exactly the opposite. As Aqua Texas discussed in its Response to the ED's Rate Sheet, it has long been the policy of the ED to use active connections, rather than total connections, in calculating rates necessary to recover a utility's revenue requirement. Response at 2-3. Those active connection numbers were known by staff, See Response at 3-4, and have never been disputed. Aqua Texas simply wanted the ED's long-followed policy applied to this case. Adherence to that policy is following the rule book, not throwing it away.

included a provision in which the "amortized [rate case] expense *shall be allowed a cost of money interest rate of six percent (6.0%).*" Order at 6. A true and correct copy of the Tecon Rate Order is attached hereto as Exhibit B. That fact alone might warrant reconsideration.

But this rate case presents an entirely new issue. Unlike the rate case expense surcharges the Commission ordinarily sees, this case presents a deferred expense balance and resulting surcharge unlike anything previously considered by the Commission. There is literally no precedent for the multi-year, multi-million dollar deferred expense balance that Aqua Texas incurred by phasing in its rates to avoid rate shock. It is undisputed that the phased rates deferred expense balance, which Aqua Texas sought and received permission from the ED to implement,² are a case of first impression for the Commission. That rate phase-in was a substantial benefit to the customers because it allowed for a gradual adjustment of rates to reflect the new revenue requirement, rather than a single step increase. For instance, if ratepayers in the North Region were not given the benefit of a phased rate increase, wastewater base rates would have increased from \$36.00 to \$73.30 in a single step, rather than over four years. In the Southwest Region, wastewater base rates would have immediately increased from \$38.00 to \$87.97.

By phasing in rates and deferring its multi-million dollar expense balance for several years, Aqua Texas incurred a substantial carrying cost. In other analogous circumstances, the Commission has provided for interest, or even a return, for similar non-plant expenses. As noted above, the Commission provided for interest on rate case expenses in *Tecon* matter. By rule, the Commission has determined that cash kept on hand for operations and maintenance expenses is entitled to a return. 30 TEX. ADMIN. CODE § 291.31(c)(2)(B)(iii). By simply providing for the carrying cost of

² See AT-59, AT-60.

that balance, Aqua Texas will not be given a return on the deferred balance, but will be made whole for its carrying costs.

Here, the "cost of money"³ is known and is a real cost associated with Aqua Texas' long-term deferral of expenses to allow for rates to be phased in. That cost of money is 4.87%. See Proposal for Decision at 63. Aqua Texas originally sought to have the deferred expenses treated as a regulatory asset and included within rate base. Such treatment would have provided the utility with a 8.44% weighted rate of return. Aqua Texas acknowledges that the ALJs and the Commission have rejected that approach and the utility does not seek to re-argue that issue here. Instead, what is at issue here is simply being made whole – the cost of money over time – rather than a return on investment.

Thus, there are good reasons for providing a cost-of-carry interest rate on the deferred expense balance. There are also important reasons why *denying* a cost-of-carry interest component will have negative policy implications in the future. If Aqua Texas is denied a "make whole" cost-of-carry interest rate on its deferred balance, as a practical matter, it will take phased rates off the table as a viable option for any large utility companies seeking a substantial rate increase. The reason is plain. If a utility cannot recover even the *cost* of deferring expenses for a rate phase-in (putting aside a *return*), and the carrying cost of that phase-in is several million dollars (as here), there is no chance that such a phase-in would ever be tried again in the future. It may be that the Commission had these issues and policy implications in mind when the limited discussion about interest took place at the June 18 Agenda (there was no discussion about interest at the March Agenda), but it was not evident from the actual comments made by the Commissioners.

³ See Tecon Rate Order at 6.

In light of the important policy considerations and the very limited discussion at Agenda, Aqua Texas respectfully requests that the ALJs include two sets of calculations for the deferral surcharge — one with interest and one without interest — to the Commission along with a discussion of the Tecon rate case precedent cited above, and the policy implications involved in providing interest on the deferred expense balance. To that end, Aqua Texas has included two sets of deferral surcharge calculations. Exhibit C calculates the deferral balance with a 4.87% interest rate to make Aqua Texas whole for the carrying cost. Exhibit A calculates the surcharge for the deferral balance without interest. Given the length of this case (now over 4 years), the additional two year surcharge recovery period, and Aqua Texas' substantial holding cost associated with the deferred expenses, Aqua Texas respectfully asks that cost-of-carry interest be included on the deferral.

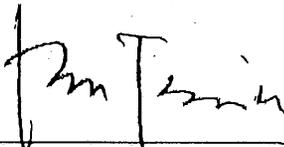
Rate Case Expenses

The Executive Director has recommended disallowing a substantial portion of Aqua Texas' post-hearing rate case expenses in this proceeding. The ED has recommended disallowance of Mr. Hugus' rate case work because "his salary as an executive of Aqua America is included in the cost of service and is recovered through rates." ED's Reply at 3. Although those facts were correct at the time of the hearing, they are not accurate now. The post-hearing rate case expenses for work by Mr. Richard D. Hugus are supported by the attached affidavit of Robert L. Laughman. See Exhibit D. As reflected in Mr. Laughman's affidavit, and contrary to the assumption by the Executive Director, Mr. Hugus has retired, and payment for Mr. Hugus's work on the rate case is not duplicated by any other salary expense or other expense claimed by Aqua Texas in this case. Because Mr. Hugus retired in late 2006, and has worked on a contract basis as a rate consultant with Aqua Texas ever since, Aqua Texas should be permitted to recover the entire amount of Mr. Hugus's contract

expenses in this proceeding. Additionally, the affidavit of Paul Terrill is attached in support of Aqua Texas' post-hearing reasonable and necessary rate case attorneys' fees. See Exhibit E.

Respectfully submitted,

THE TERRILL FIRM, P.C.

By: 

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ATTORNEYS FOR AQUA UTILITIES, INC.
AND AQUA DEVELOPMENT, INC. d/b/a AQUA
TEXAS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2008, a true and complete copy of the foregoing was sent to the following by the indicated method:

Parties	Representative / Address	<i>via fax: 475-4994</i>
STATE OFFICE ADMINISTRATIVE HEARINGS	Craig R. Bennett Travis Vickery Administrative Law Judges State Office of Admin. Hearings 300 West 15th Street Suite 502 Austin, TX 78701	<i>via fax: 475-4994</i>
SOAH Docket Clerk	Docket Clerk State Office of Admin. Hearings 300 West 15th Street, Suite 502 Austin, TX 78701	<i>via fax: 475-4994</i>
TCEQ Chief Clerk	Office of the Chief Clerk, TCEQ 12100 Park 35 Circle Bldg. F/1, Room 1104 Austin, Texas 78753	<i>via fax: 239-3311</i>
TCEQ Executive Director	Todd Galiga Executive Director, TCEQ MC-175 P.O. Box 13087 Austin, TX 78711-3087	<i>via fax: 239-0606</i>
Office of Public Interest Counsel of TCEQ	Scott Humphrey TCEQ, OPIC MC-103 P.O. Box 13087 Austin, TX 78711-3087	<i>via fax: 239-6377</i>
Estates of Shady Hollow HOA; Comanche Cliffs HOA; Kerr and Kendall Counties Falling Water POA; The Reserve at Falling Water POA; Cypress Springs Estates POA; Kendall Pointe POA; Onion Creek Meadows POA	Ed McCarthy Jackson Sjoberg McCarthy & Wilson L.L.P. 711 West 7th St. Austin Texas 78701	<i>via fax: 225-5565</i>

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TEXAS
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Parties

Representative / Address

Eagle Creek Ranch OA

Linda Lamberth
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Floresville, TX 78114

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m

Southeast Region Homeowners
Group (CIA of Shadow Bay; Cedar
Point HOA; Lake Conroe Village
HOA; Brentwood Residents; Port
Adventure HOA; Lake Livingston
Village HOA; and numerous
individual customers

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Byron Zinn
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Spicewood, TX 78669

via first-class mail

Paul M. Terrill, III

Aqua Texas Deferred Expense Surcharge Calculation

Date	Expense Deferral	Expense Recovery	Balance Per AT's Books
Aug-04	745,000	-	745,000
Sep-04	745,000	-	1,490,000
Oct-04	745,000	-	2,235,000
Nov-04	745,000	-	2,980,000
Dec-04	745,000	-	3,725,000
Jan-05	745,000	-	4,470,000
Feb-05	745,000	-	5,215,000
Mar-05	745,000	-	5,960,000
Apr-05	745,000	-	6,705,000
May-05	745,000	-	7,450,000
Jun-05	745,000	-	8,195,000
Jul-05	747,000	-	8,942,000
Aug-05	497,000	(185,000)	9,254,000
Sep-05	497,000	(185,000)	9,566,000
Oct-05	497,000	(185,000)	9,878,000
Nov-05	497,000	(185,000)	10,190,000
Dec-05	497,000	(185,000)	10,502,000
Jan-06	497,000	(185,000)	10,814,000
Feb-06	497,000	(185,000)	11,126,000
Mar-06	497,000	(185,000)	11,438,000
Apr-06	497,000	(185,000)	11,750,000
May-06	497,000	(185,000)	12,062,000
Jun-06	497,000	(185,000)	12,374,000
Jul-06	493,000	(185,000)	12,682,000
Aug-06	248,000	(308,000)	12,622,000
Sep-06	248,000	(308,000)	12,562,000
Oct-06	248,000	(308,000)	12,502,000
Nov-06	248,000	(308,000)	12,442,000
Dec-06	248,000	(308,000)	12,382,000
Jan-07	248,000	(308,000)	12,322,000
Feb-07	248,000	(308,000)	12,262,000
Mar-07	248,000	(308,000)	12,202,000
Apr-07	248,000	(308,000)	12,142,000
May-07	248,000	(308,000)	12,082,000
Jun-07	248,000	(308,000)	12,022,000
Jul-07	252,000	(308,000)	11,966,000
Aug-07	248,000	(308,000)	11,906,000
Sep-07	248,000	(308,000)	11,846,000
Oct-07	248,000	(308,000)	11,786,000
Nov-07	248,000	(308,000)	11,726,000
Dec-07	248,000	(308,000)	11,666,000
Jan-08	248,000	(308,000)	11,606,000
Feb-08	248,000	(308,000)	11,546,000
Mar-08	248,000	(308,000)	11,486,000
Apr-08	248,000	(308,000)	11,426,000
May-08	248,000	(308,000)	11,366,000
Jun-08	248,000	(308,000)	11,306,000
Jul-08	248,000	(308,000)	11,246,000
Aug-08	248,000	(308,000)	11,186,000
Sep-08	248,000	(308,000)	11,126,000
Oct-08	248,000	(308,000)	11,066,000
Nov-08	248,000	(308,000)	11,006,000
Dec-08	248,000	(308,000)	10,946,000

Total Deferred Amount	10,946,000
Active Connections	45,871
Surcharge for 24 Months	9.94



TEXAS NATURAL RESOURCE CONSERVATION COMMISSION



SOAH DOCKET NO. 582-03-1925
TCEQ DOCKET NO. 2001-1080-UCR

IN THE MATTER OF THE APPEAL BY TECON WATER COMPANY, L.P., FROM RATEMAKING ACTIONS OF THE CITY OF BLUE MOUND
§
§
§
§
§
§
BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDED ORDER

The request for dismissal of the petition by Tecon Water Company, L.P., ("Tecon") appealing the ratemaking action of the City of Blue Mound ("Blue Mound") was presented to the Executive Director of the Texas Commission on Environmental Quality ("Commission") for approval pursuant to Section 5.122 of the Texas Water Code ("Code"). Tecon provides water and sewer service in 24 counties in Texas and is a retail public utility as defined in Section 13.002(19) of the Code.

On June 19, 2001, the Blue Mound City Council voted by a majority vote to decline Tecon's application for water and sewer rate increases for service within Blue Mound. Tecon filed a petition with the Commission appealing this ratemaking action on June 27, 2001, and it was assigned Application No. 33552-A.

Tommy L. Broyles, administrative law judge (ALJ) of the State Office of Administrative Hearings ("SOAH"), conducted a preliminary hearing on December 18, 2001, assumed jurisdiction, consolidated this matter with Tecon's application for water and sewer service rate increases for the rest of its systems, set a procedural schedule, and designated parties. Several requests for party status were granted contingent upon the filing of supporting documents. On December 21, 2001, the ALJ

issued an order setting out the schedule and procedures, scheduling a prehearing conference and hearing on the merits, and referring the case for a mediated settlement conference.

On January 23, 2003, after the ALJ received the documents supporting party status, the ALJ designated a complete list of parties to the consolidated dockets as follows: Tecon represented by Mark H. Zeppa; the Executive Director represented by Lara Nehman and Scott Humphrey; the Office of Public Interest Counsel represented by Mary Alice Boehm and Anne Rowland; and the following individual residents of certain subdivisions Tecon serves, Home Owners Associations (HOAs), Property Owners Associations (POAs), and others designated as parties and aligned into the following groups for participation in this case: Comanche Harbor, Oak Trail Shores, Western Hills Harbor, Lake Grandbury Harbor, Montego Bay, Helen Hensel, Donald Poor, Carl Pendergrass, Wynnewood Haven, Kathy Nielsen, Roxie Jackson, and Tim Flower, grouped together as Protestants "A", and collectively represented by Al Bulloch and Gary Towers; Beachwood Estates, Richard Marshall, Calendar Lake, Diamond Head Bay, Brierwood Bay, Lakeway Harbor, and Hickory Hills, grouped together as Protestants "B", and collectively represented by Richard Marshall and Jay Weisner; Jo-Ellen Lawhon, James McFarland, Hidden Cove, Palmetto, Frank Dosier, Susan Bellmyer, and Nathan C. Wright, grouped together as Protestants "C", and collectively represented by Martin Raymond and Jo-Ellen Lawhon; and Blue Mound represented by Mayor James A. Boyles Jr.

On February 21 and 22, 2002, a mediated settlement conference was held. Participants included representatives from Tecon, the Executive Director, the Office of Public Interest Counsel, Protestant Groups A, B, and C, and Blue Mound.

On March 1, 2002, the parties filed an agreed motion for abatement of the proceeding to allow time to work on a mediated settlement partially agreed to in principal during the February 21 and 22, 2002 mediation. On March 7, 2002, the ALJ granted the parties' motion abating the matter until March 29, 2002.

On March 22, 2002, the mediators, Suzanne Formby Marshall and Thomas H. Walston filed a report on the mediated settlement conference. They reported as follows: the City of Blue Mound and Tecon did not reach an agreement; an agreement in principal was reached during the mediation between all other parties, subject to approval of the constituents represented during the mediation; the mediators subsequently received final notification from those parties that the agreement was approved by their constituents; and the settlement agreement between the parties, with the exception of Blue Mound, was conditioned upon the settlement of rate base within six months of the effective date of the settlement rates.

On April 25, 2002, the ALJ ordered the parties to file a status report by May 10, 2002, regarding the status of the settlement negotiations on the rate base issue and understanding that the Blue Mound protest would continue. The ALJ also ordered that parties, not in settlement discussions, present a proposed procedural schedule by May 10, 2002.

On May 8, 2002, Tecon filed a motion to sever the appeal of Blue Mound's ratemaking actions and filed a proposed procedural schedule for that matter. On May 10, 2002, Blue Mound filed a response opposing the motion to sever. On May 14, 2002, Tecon filed a response to Blue Mound's response. On May 23, 2003, the ALJ ordered the Executive Director to file a position on Tecon's motion to sever by June 7, 2002. On June 7, 2002, the Executive Director filed a response agreeing with Blue Mound that it was premature to sever the matter because if the rate base issue did not settle, the entire rate case, including the Blue Mound appeal should be litigated together. On June 24, 2002, the ALJ issued an order denying Tecon's request for severance finding that severance was premature and ordered that the parties file a status report by July 24, 2002.

On August 21, 2002, Blue Mound requested reimbursement for rate case expenses but did not indicate whether the parties reached an agreement on the matter. The ALJ ordered another status report from all parties by August 30, 2002, addressing: (1) responses to Blue Mound's

reimbursement request; (2) the settlement status of the Blue Mound matter and the system-wide rate base matter; and (3) a discussion of any statutory or regulatory deadlines for concluding the hearing including 30 TAC §55.101(g)(5) which provides that the maximum expected duration of a hearing on an application referred to SOAH be no longer than one year from the first day of the preliminary hearing unless otherwise directed by the commission.

The Office of Public Interest Counsel, the Executive Director and Tecon filed responses. The Office of Public Interest Counsel and Executive Director asserted that the ALJ had authority to continue the case beyond the one year period. The Office of Public Interest Counsel supported Blue Mound's request for reimbursement. Tecon asserted that the Blue Mound case should proceed to hearing but that the ALJ had the authority to continue the other matter beyond the one year period since parties were engaged in settlement discussions. The ED and Tecon agreed that settlement discussions on the rate base matter were expected to conclude in settlement by October 15, 2002, and that Tecon would file another status report on October 16, 2002.

On October 15, 2002, Tecon filed an announcement of settlement of contested issues among all parties except Blue Mound and represented that Tecon and the Executive Director would follow up by filing a motion to remand the matter to the Executive Director for entry of final orders adopting the parties' settlement and establishing rate base bench marks.

On January 14, 2003, the Executive Director filed a motion to remand the case asserting that except for Blue Mound, the parties had settled all matters in controversy. The Executive Director requested that matters concerning the City of Blue Mound's ratemaking action be severed and given a new docket number. No objections to this motion were received. On January 29, 2003, the ALJ severed Blue Mound's ratemaking action and assigned the new docket number 582-03-1925. Pursuant to 30 TAC §80.101, the ALJ granted the motion remanding the remaining matters.

On February 26, 2003, Tecon filed the document "Announcement of Settlement of Contested

Issues on Blue Mound Rate Appeal" in which Tecon represented that Tecon and Blue Mound reached a settlement of all material issues of fact and law in dispute in the pending municipal rate appeal. At that time due to the illness of Tecon's attorney, counsel for both entities had been unable to meet to work out a formal settlement agreement, but hoped to do so within the next couple of weeks.

On May 1, 2003, the parties filed a joint Motion to Remand for Action by the Executive Director pursuant to a settlement agreement negotiated by Tecon and Blue Mound. The settlement was reviewed and accepted by the Executive Director and the Public Interest Counsel. The rate structure agreed to by the designated parties, effective with the April 2003 billing cycle or as soon thereafter as Tecon can reasonably accommodate the change in its new billing system, is just, reasonable and adequate to allow the utility to recover costs of providing water and sewer service, as required by Sections 13.182 and 13.183 of the Code. Attached is a tariff reflecting the agreed rates. Pursuant to the attached Motion to Remand and Exhibit A to that Motion, the parties agreed to the following provisions.

Findings of Fact

- 1. Effective with the normal April 2003 billing cycle or as soon thereafter as Tecon can reasonably accommodate the change in its new billing system, the water rates (including 0-gallons) are:

<u>meter size in inches</u>	<u>per month</u>
5/8 x 3/4	\$ 22.00
1	\$ 36.74
1.5	\$ 73.26
2	\$117.26
3	\$220.00
4	\$366.74
6	\$733.26

Water gallonage rate — \$ 2.60 per 1000 gallons for all meter sizes

- 2. Effective with the normal April 2003 billing cycle or as soon thereafter as Tecon can reasonably accommodate the change in its new billing system, the sewer rate is a flat rate of \$27.00 per month.

3. As of October 15, 2002, Tecon's original cost investment in currently used and useful water utility plant in service inside the City is \$1,177,434 which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
4. As of October 15, 2002, Tecon's annual depreciation expense on its original cost investment in currently used and useful water utility plant in service inside the City is \$29,568, which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
5. As of October 15, 2002, Tecon's accumulated depreciation expense, as of the dates of acquisition, in currently used and useful water utility plant in service inside the City is \$370,412, which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
6. As of October 15, 2002, Tecon's net plant investment in currently used and useful water utility plant in service inside the City is \$807,023, which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
7. As of October 15, 2002, Tecon's original cost investment in currently used and useful wastewater utility plant in service inside the City is \$346,050, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
8. As of October 15, 2002, Tecon's annual depreciation expense on its original cost investment in currently used and useful wastewater utility plant in service inside the City is \$6,920, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
9. As of October 15, 2002, Tecon's accumulated depreciation expense, as of the dates of acquisition, in currently used and useful wastewater utility plant in service inside the City is \$193,277, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
10. As of October 15, 2002, Tecon's net plant investment in currently used and useful wastewater utility plant in service inside the City is \$ 152,773, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
11. Rate Case Expenses. The post-filing rate case expenses of the City and Tecon attributable to this municipal rate appeal will be recovered as a customer surcharge inside the City over the two-year amortization period. The recoverable rate case expenses of each the City and Tecon will be fixed at the City's demonstrable expense level. The City shall serve the Executive Director with a copy of its total rate case expense statement at the time it renders it to Tecon. The amortized expense shall be allowed a cost of money interest rate of six percent (6.0%).
12. Surcharge of lost revenues since City's rate action. Tecon agrees to forego its right to seek a surcharge of lost revenues for the City's failure to grant the utility timely rate relief. There are no refunds at issue.
13. Tariffs. All other provisions of Tecon's proposed water and sewer tariffs shall be approved as submitted.

14. Effective. The settlement rates shall become effective as soon as Tecon can implement the change in their billing program, which the City understands is being converted to a new system to be completed no later than July 1, 2003. Surcharges of rate case expenses may be phased in to reduce customer rate shock with notice to affected customers.

Ordering Paragraph

This order, and the documents attached to it, do not: (1) prevent regulatory authorities in future rate cases from reflecting plant-in-service additions or retirements, accumulated depreciation, and amortization expenses booked, or that should have been booked, after October 15, 2002 when determining revenue requirements in future rate cases; (2) establish whether Tecon will file future rate cases based upon system-wide rates, regional rates, or system-specific rates, or a combination of system-wide, regional, and system-specific rates; (3) preclude regulatory authorities from establishing rates in future rate cases based upon system-wide rates, regional rates, or system-specific rates, or a combination of system-wide, regional and system-specific rates; (4) establish which rate base components will be or will not be found used and useful in future rate cases; or (5) preclude future changes to depreciation rates and expenses.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. Rate increases for Tecon Water Company, L.P. be approved as listed on the attached Settlement Agreement, Motion to Remand, and approved tariffs and shall be deemed effective with the April 2003 billing cycle or as soon thereafter as Tecon can reasonably accommodate the change in its new billing system.
2. Unless previously provided, Tecon Water Company, L.P. shall provide written notice of the final rate structure approved in this proceeding to all affected customers with the next billing cycle after issuance of this Order.
3. As of the April 2003 billing cycle or as soon thereafter as Tecon can reasonably accommodate the change in its new billing system, the water rates based off of 5/8" and 3/4" meter are \$22.00 with no included gallonage. The gallonage charge is \$2.60/1000 gallons.
4. As of the April 2003 billing cycle or as soon thereafter as Tecon can reasonably accommodate the change in its new billing system, the sewer rate is a flat rate of \$27.00 per month.
5. As of October 15, 2002, Tecon's original cost investment in currently used and useful water utility plant in service inside the City is \$1,177,434 which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
6. As of October 15, 2002, Tecon's annual depreciation expense on its original cost investment in currently used and useful water utility plant in service inside the City is \$29,568, which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
7. As of October 15, 2002, Tecon's accumulated depreciation expense, as of the dates of acquisition, in currently used and useful water utility plant in service inside the City is \$370,412, which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.

- 8. As of October 15, 2002, Tecon's net plant investment in currently used and useful water utility plant in service inside the City is \$807,023, which is specified in Attachment "1" of the Settlement Agreement - EXHIBIT A hereto.
- 9. As of October 15, 2002, Tecon's original cost investment in currently used and useful wastewater utility plant in service inside the City is \$346,050, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
- 10. As of October 15, 2002, Tecon's annual depreciation expense on its original cost investment in currently used and useful wastewater utility plant in service inside the City is \$6,920, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
- 11. As of October 15, 2002, Tecon's accumulated depreciation expense, as of the dates of acquisition, in currently used and useful wastewater utility plant in service inside the City is \$193,277, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
- 12. As of October 15, 2002, Tecon's net plant investment in currently used and useful wastewater utility plant in service inside the City is \$ 152,773, which is specified in Attachment "2" of the Settlement Agreement - EXHIBIT A hereto.
- 13. This order, and the documents attached to it, do not: (1) prevent regulatory authorities in future rate cases from reflecting plant-in-service additions or retirements, accumulated depreciation, and amortization expenses booked, or that should have been booked, after October 15, 2002 when determining revenue requirements in future rate cases; (2) establish whether Tecon will file future rate cases based upon system-wide rates, regional rates, or system-specific rates, or a combination of system-wide, regional, and system-specific rates; (3) preclude regulatory authorities from establishing rates in future rate cases based upon system-wide rates, regional rates, or system-specific rates, or a combination of system-wide, regional and system-specific rates; (4) establish which rate base components will be or will not be found used and useful in future rate cases; or (5) preclude future changes to depreciation rates and expenses.

The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order and tariff to the parties.

If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any portion shall not affect the validity of the remaining portions of the Order.

Issue Date: JAN 21 2004

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Margaret Hoffman
 For the Commission

Billing via BTE

C

Aqua Texas Deferred Expense Surcharge Calculation

4.87%

Date	Expense Deferral	Expense Recovery	Balance Per AT's Books	Interest	Cumulative Interest	Expense Deferral with Interest
Aug-04	745,000	-	745,000	3,023.46	3,023.46	748,023.46
Sep-04	745,000	-	1,490,000	6,046.92	9,070.38	1,499,070.38
Oct-04	745,000	-	2,235,000	9,070.38	18,140.76	2,263,140.76
Nov-04	745,000	-	2,980,000	12,093.83	30,234.59	3,010,234.59
Dec-04	745,000	-	3,725,000	15,117.29	45,351.88	3,770,351.88
Jan-05	745,000	-	4,470,000	18,140.75	63,492.63	4,533,492.63
Feb-05	745,000	-	5,215,000	21,164.21	84,656.84	5,299,656.84
Mar-05	745,000	-	5,960,000	24,187.67	108,844.51	6,088,844.51
Apr-05	745,000	-	6,705,000	27,211.13	136,055.64	6,841,055.64
May-05	745,000	-	7,450,000	30,234.58	166,290.22	7,616,290.22
Jun-05	745,000	-	8,195,000	33,258.04	199,548.26	8,394,548.26
Jul-05	747,000	-	8,942,000	36,289.62	235,837.88	9,177,837.88
Aug-05	497,000	(185,000)	9,254,000	37,555.82	273,393.70	9,527,393.70
Sep-05	497,000	(185,000)	9,566,000	38,822.02	312,215.72	9,878,215.72
Oct-05	497,000	(185,000)	9,878,000	40,088.22	352,303.94	10,230,303.94
Nov-05	497,000	(185,000)	10,190,000	41,354.42	393,658.36	10,583,658.36
Dec-05	497,000	(185,000)	10,502,000	42,620.62	436,278.98	10,938,278.98
Jan-06	497,000	(185,000)	10,814,000	43,886.82	480,165.80	11,294,165.80
Feb-06	497,000	(185,000)	11,126,000	45,153.02	525,318.82	11,651,318.82
Mar-06	497,000	(185,000)	11,438,000	46,419.22	571,738.04	12,009,738.04
Apr-06	497,000	(185,000)	11,750,000	47,685.42	619,423.46	12,369,423.46
May-06	497,000	(185,000)	12,062,000	48,951.62	668,375.08	12,730,375.08
Jun-06	497,000	(185,000)	12,374,000	50,217.82	718,592.90	13,092,592.90
Jul-06	493,000	(185,000)	12,682,000	51,467.78	770,060.68	13,452,060.68
Aug-06	248,000	(308,000)	12,622,000	51,224.28	821,284.96	13,443,284.96
Sep-06	248,000	(308,000)	12,562,000	50,980.78	872,265.74	13,434,265.74
Oct-06	248,000	(308,000)	12,502,000	50,737.28	923,003.02	13,425,003.02
Nov-06	248,000	(308,000)	12,442,000	50,493.78	973,496.80	13,415,496.80
Dec-06	248,000	(308,000)	12,382,000	50,250.28	1,023,747.08	13,405,747.08
Jan-07	248,000	(308,000)	12,322,000	50,006.78	1,073,753.86	13,395,753.86
Feb-07	248,000	(308,000)	12,262,000	49,763.28	1,123,517.14	13,385,517.14
Mar-07	248,000	(308,000)	12,202,000	49,519.78	1,173,036.92	13,375,036.92
Apr-07	248,000	(308,000)	12,142,000	49,276.28	1,222,313.20	13,364,313.20
May-07	248,000	(308,000)	12,082,000	49,032.78	1,271,345.98	13,353,345.98
Jun-07	248,000	(308,000)	12,022,000	48,789.28	1,320,135.26	13,342,135.26
Jul-07	252,000	(308,000)	11,966,000	48,562.02	1,368,697.28	13,334,697.28
Aug-07	248,000	(308,000)	11,906,000	48,318.52	1,417,015.80	13,323,015.80
Sep-07	248,000	(308,000)	11,846,000	48,075.02	1,465,090.82	13,311,090.82
Oct-07	248,000	(308,000)	11,786,000	47,831.52	1,512,922.34	13,298,922.34
Nov-07	248,000	(308,000)	11,726,000	47,588.02	1,560,510.36	13,286,510.36
Dec-07	248,000	(308,000)	11,666,000	47,344.52	1,607,854.88	13,273,854.88
Jan-08	248,000	(308,000)	11,606,000	47,101.02	1,654,955.90	13,260,955.90
Feb-08	248,000	(308,000)	11,546,000	46,857.52	1,701,813.42	13,247,813.42
Mar-08	248,000	(308,000)	11,486,000	46,614.02	1,748,427.44	13,234,427.44
Apr-08	248,000	(308,000)	11,426,000	46,370.52	1,794,797.96	13,220,797.96
May-08	248,000	(308,000)	11,366,000	46,127.02	1,840,924.98	13,206,924.98
Jun-08	248,000	(308,000)	11,306,000	45,883.52	1,886,808.50	13,192,808.50
Jul-08	248,000	(308,000)	11,246,000	45,640.02	1,932,448.52	13,178,448.52
Aug-08	248,000	(308,000)	11,186,000	45,396.52	1,977,845.04	13,163,845.04
Sep-08	248,000	(308,000)	11,126,000	45,153.02	2,022,998.06	13,148,998.06
Oct-08	248,000	(308,000)	11,066,000	44,909.52	2,067,907.58	13,133,907.58
Nov-08	248,000	(308,000)	11,006,000	44,666.02	2,112,573.60	13,118,573.60
Dec-08	248,000	(308,000)	10,946,000	44,422.52	2,156,996.12	13,102,996.12

Total Deferred Amount	13,775,698	13,102,996.12
Active Connections	45,871	672,701.88
Surcharge for 24 Months	12.52	13,775,698.00
Expense Deferral Surcharge Billing per Month	574,084.10	

Interest (page 2)

**Aqua Texas Deferred Expense Surcharge Calculation
Amortization Schedule**

Date	Expense Deferral with Interest	Expense Deferral Surcharge Billing per Month	Carrying Balance	Interest during 2 year payback at 4.87%	Ending Deferral Balance
Jan-09	13,102,996.12	(574,084.10)	12,528,912.02	53,176.33	12,582,088.35
Feb-09	12,582,088.35	(574,084.10)	12,008,004.25	51,062.31	12,059,066.55
Mar-09	12,059,066.55	(574,084.10)	11,484,982.45	48,939.71	11,533,922.17
Apr-09	11,533,922.17	(574,084.10)	10,959,838.07	46,808.50	11,006,646.57
May-09	11,006,646.57	(574,084.10)	10,432,562.47	44,668.64	10,477,231.11
Jun-09	10,477,231.11	(574,084.10)	9,903,147.01	42,520.10	9,945,667.10
Jul-09	9,945,667.10	(574,084.10)	9,371,583.00	40,362.83	9,411,945.84
Aug-09	9,411,945.84	(574,084.10)	8,837,861.74	38,196.81	8,876,058.55
Sep-09	8,876,058.55	(574,084.10)	8,301,974.45	36,022.00	8,337,998.45
Oct-09	8,337,998.45	(574,084.10)	7,763,912.35	33,838.37	7,797,750.72
Nov-09	7,797,750.72	(574,084.10)	7,223,666.62	31,645.87	7,255,312.49
Dec-09	7,255,312.49	(574,084.10)	6,681,228.39	29,444.48	6,710,672.87
Jan-10	6,710,672.87	(574,084.10)	6,136,588.77	27,234.15	6,163,822.92
Feb-10	6,163,822.92	(574,084.10)	5,589,738.82	25,014.85	5,614,753.67
Mar-10	5,614,753.67	(574,084.10)	5,040,669.57	22,786.54	5,063,456.11
Apr-10	5,063,456.11	(574,084.10)	4,489,372.01	20,549.19	4,509,921.20
May-10	4,509,921.20	(574,084.10)	3,935,837.10	18,302.76	3,954,139.86
Jun-10	3,954,139.86	(574,084.10)	3,380,055.76	16,047.22	3,396,102.98
Jul-10	3,396,102.98	(574,084.10)	2,822,018.88	13,782.52	2,835,801.40
Aug-10	2,835,801.40	(574,084.10)	2,261,717.30	11,508.63	2,273,225.93
Sep-10	2,273,225.93	(574,084.10)	1,699,141.83	9,225.51	1,708,367.34
Oct-10	1,708,367.34	(574,084.10)	1,134,283.24	6,933.12	1,141,216.36
Nov-10	1,141,216.36	(574,084.10)	587,132.26	4,631.44	571,763.70
Dec-10	571,763.70	(571,763.70)	-	-	-
Total Interest during payback				672,701.88	



AFFIDAVIT

STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Robert L. Laughman, whose identity is known to me. Upon being duly sworn he stated:

“My name is Robert L. Laughman. I am capable of making this Affidavit. The facts stated in this Affidavit are within my personal knowledge and are true and correct.

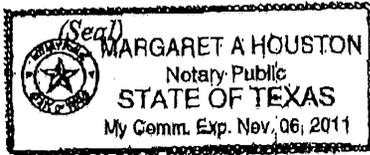
I am the current President of Aqua Texas, Inc. Richard D. Hugus formally retired from his position as President of the Southern Division of Aqua America, Inc. in late 2006. Since that time, Mr. Hugus has worked as a part-time consultant for Aqua America, Inc. on a variety of issues, including those related to the case styled *Rate Change Application by Aqua Utilities, Inc. and Aqua Development, Inc. d/b/a Aqua Texas, Inc.*; SOAH Docket Nos. 582-05-2770 and 582-05-2771; TCEQ Docket Nos. 2004-1120-UCR and 2004-1671-UCR (“Aqua Texas Rate Case”).

In Mr. Hugus’s capacity as a part-time consultant for Aqua America, Inc., he has billed the company for time he spent working on the Aqua Texas Rate Case. All of the payments he received from Aqua America, Inc. were payments for work done on the company’s behalf as a part-time consultant and were not duplicated by any other salary or overhead of Aqua America, Inc. and its subsidiaries.”

Further affiant sayeth not.

Robert L. Laughman
ROBERT L. LAUGHMAN
President
AQUA TEXAS, INC.

SWORN TO and SUBSCRIBED before me by Robert L. Laughman on July 15, 2008.



Margaret A. Houston
Notary Public in and for the State of Texas
My commission expires: 11/6/11

- b. My associate, Amanda Cagle, bills at \$200 per hour and billed 227.25 hours for a total of \$ 45,450.00.
- c. My associate, Howard Slobodin, bills at \$185 per hour and billed 217.25 hours for a total of \$40,191.25.
- d. My associate, Geoffrey Kirshbaum, bills at \$185.00 per hour and billed 18.25 hours for a total of \$3,376.25.
- e. My legal assistant, Beckie Figg, bills at \$50.00 per hour and billed 101 hours for a total of \$5,050.00.

4. The legal fees set forth in this affidavit do not include any fees that were the subject of the rate case expense hearing held on February 16 and 19, 2007. The tasks performed by me and my firm on the Aqua Texas-Rate Case include, among others:

- a. Preparation for and participation in the Rate Case Expense Hearing;
- b. Work on settlement agreement with Aqua Texas' systems.
- c. Research, drafting and filing of Closing Argument Brief;
- d. Review of Closing Argument Briefs filed by others parties; preparation and filing of Responses to Closing Argument Briefs;
- e. Preparation and filing of Proposed Findings of Fact and Conclusions of Law;
- f. Preparation and filing of Responses to Orders No. 48, 49 and 50 along with associated replies;
- g. Review of Proposal for Decision, drafting and filing of Exceptions to Proposal for Decision;
- h. Review of other parties' Exceptions to Proposal for Decision; drafting Responses to the same;
- i. Research and analysis regarding rate case expense surcharge issue;

- j. Preparation for and attendance at TCEQ Commissioner's Agendas on March 19, 2008 and June 18, 2008; and
- k. Preparation and filing of Issues and Questions to be Resolved by the Commissioners.

5. Legal expenses were also incurred for copying, faxes, overnight delivery charges and postage in the rate case. Those costs total \$2,206.67.

6. Copies of all invoices reflecting the time, tasks and expenses outlined above have been forwarded to the TCEQ ED for review.

7. By almost any measure, this rate case is the most complicated and lengthy rate case the TCEQ has ever processed. The fees and expenses reflected above are reasonable and necessary. I am familiar with usual and customary rates charged by attorneys in the area for cases with comparable complexity and amounts in controversy, and the fees described above are those customarily charged in this area for the same or similar services by those with similar experience, reputation, and ability, considering the type of controversy, the time limitations imposed, the work involved and the results obtained.

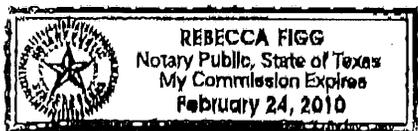
8. Based on my knowledge and experience, the above attorneys' fees incurred are reasonable and necessary.

"FURTHER AFFIANT SAYETH NOT."



PAUL M. TERRILL, III

SUBSCRIBED AND SWORN to before me on this the 15th day of July, 2008, by Paul M. Terrill, III.




NOTARY PUBLIC, STATE OF TEXAS

THE TERRILL FIRM

A PROFESSIONAL CORPORATION

810 West 10th Street
Austin, Texas 78701
Tel (512) 474-9100
Fax (512) 474-9888

FAX COVER SHEET

DATE : July 15, 2008

TIME : 6:04pm

2008 JUL 16 AM 7:56
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

PLEASE DELIVER TO:

NAME :	Craig R. Bennett Travis Vickery	FAX NUMBER :	475-4994
	SOAH Docket Clerk		475-4994
	TCEQ Office of Chief Clerk		239-3311
	Todd Galiga (TCEQ - ED)		239-0606
	Scott Humphrey (TCEQ - OPIC)		239-6377
	Linda Lamberth		sinanju@ix.netcom.com
	Gayle Pierce		mgpiercerv@msn.com
	Ed McCarthy		(512) 225-5565
	Judith Weidner		no fax - mail
	Byron Zinn		no fax - mail
FROM :	Beckie Figg, Paralegal		
CM #	9284		
TOTAL NUMBER OF PAGES SENT (Including coversheet) :	26 pages		
IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL BACK AS SOON AS POSSIBLE.			
REMARKS :			
RE:	<i>Application by Aqua Utilities, Inc. d/b/a Aqua Texas, Inc., and AquaSource Development Company d/b/a Aqua Texas, Inc., to Change Their Water and Sewer Tariffs and Rates in Various Counties, and Appeal of Rate-Making Actions of Various Municipalities Denying Requested Changes to Water and Sewer Tariffs and Rates SOAH Docket Nos. 582-05-2770 and -2771; TCEQ Docket Nos. 2004-1120-UCR and 2004-1671-UCR</i>		
Please see attached Aqua Texas' Reply to the ED's Reply to Aqua Texas' Response to Order No 51 and the Southeast and Southwest Region's Response to Order No. 51.			
CONFIDENTIALITY NOTICE			
This facsimile transmission (and/or the documents accompanying it) may contain confidential information belonging to the sender which is protected by the attorney-client privilege. The information is intended only for the use of the individual or entity named below. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents of this information is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone to arrange for the return of the documents.			