

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

February 4, 2009

2009 FEB -4 AM 8:17
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Les Trobman, General Counsel
Texas Commission on Environmental Quality
PO Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-08-2245; TCEQ Docket No. 2007-1878-UCR; In Re:
Application of Buena Vista Water System to Change its Water Rates and Tariff,
Certificate of Convenience and Necessity No. 11656, Burnet County, Texas

Dear Mr. Trobman:

These are my recommendations concerning the exceptions to my Proposal for Decision (PFD) that have been filed by parties in the above case.

Buena Vista's Exceptions

Buena Vista filed exceptions, which the Executive Director (ED) opposes. I recommend that the Commission overrule all of Buena Vista's exceptions. The exceptions are mostly based on documents that are not in evidence, but which Buena Vista attached to its exceptions. Because they are not in evidence, I have not reviewed the attached documents closely. But a cursory review would not lead me to suspect that they would have led me to propose a significantly different result if they had been offered and admitted into evidence. Buena Vista also reargues points discussed in the PFD. I see no reason to recommend the changes that Buena Vista reargues.

Executive Director's Exceptions

When filing his exceptions, the ED provided various clarifications and calculations that the Administrative Law Judge (ALJ) had requested in the PFD. The ALJ recommends that the Commission adopt those, which would result in changes to proposed Findings of Fact (FOFs) 37, 68, 78, 79, 127, and 139.

The ED also filed exceptions to FOF 137 (to correct a meter equivalency factor) and Conclusion of Law (COL) 28 (to correct the amount claimed by Buena Vista as its revenue requirement). The ALJ recommends that both of these exceptions be granted.

Letter to Mr. Trobman
February 4, 2009

Exceptions Letter

2

Without referring to it, the ED also excepted to FOF 58, which shows a preliminary calculations of net capital invested in water service. The ED proposes to add \$721 for a turbidimeter and two replacement meters and to add 1/8 of the total annual operation and maintenance expense as a working capital allowance. The ALJ recommends that both of those exceptions be granted.

Including those exceptions, Buena Vista's net invested capital is \$63,647. As the ED calculates, that leads to a \$7,638 return on invested capital (12 percent of invested capital) and \$1,348 in federal income taxes on that return (using the calculation method that the ED proposed and the ALJ agreed with in the PFD). The ALJ recommends that the Commission adopt those calculations, which require additional changes to FOFs 58, 68, 127, and 139 and COLs 18, 28, 29, and 30.

Based on the above calculations and recommended rulings on the ED's exceptions, the ED calculates that Buena Vista's base monthly rate for a 5/8 or 3/4-inch meter with zero gallons would fall from \$33.00 pre-application to \$31.45, its base monthly rate for a 1-inch meter with zero gallons would rise from \$48.41 to \$78.63, and its charge per 1,000 gallons would stay \$2.75. The ALJ recommends that the Commission change COL 32 and Order Provision 3 to incorporate those rates.

However, the ED excepts to the ALJ's proposal to lower Buena Vista's base rates for its 5/8 and 3/4-inch-meter customers below pre-application levels. The ED agrees that the Commission has the authority to lower the rates, but he argues that it should not. The ED contends that a competently managed utility that was operating in compliance with the Commission's rules and had filed a proper application based on verifiable costs like would be entitled to rates that are higher than Buena Vista's existing rates. He acknowledges that Buena Vista has not managed its business well or complied with all standards, has been the subject of enforcement actions, and has filed two inadequate applications to increase its rates. Despite all of that, the ED argues that lowering rates might endanger Buena Vista's financial integrity, lead to a further decline in service, and eventually result in Buena Vista's system being put under the care of a receiver. The ED does not want to encourage poor management, but hopes that denial of Buena Vista's application and returning the rates to pre-application levels, along with future enforcement actions and the offering of assistance, will put Buena Vista back on track.

The ALJ recommends that the Commission overrule the ED's exception to the ALJ's proposal to reduce Buena Vista's rates. As discussed in the PFD, Buena Vista has the burden of proof and the evidence does not support a return to the pre-application rates. Moreover, there is no specific evidence that Buena Vista's financial integrity is in danger. Instead, the evidence shows that Buena Vista is over-collecting for the service that it provides.

Letter to Mr. Trobman
February 4, 2009

Exceptions Letter

3

Michael D. Wortham's Exceptions

Mr. Wortham did not file exceptions to the PFD. However, he did ask that Buena Vista be ordered to rapidly refund the amounts that it has over-collected by implementing the rates at issue in this case while the case was pending. Because the length of the refund period is a matter of Commission discretion more than fact or law, the ALJ has not recommended a specific date by which refunds should be completed. However, Ordering Paragraph 4 contains a blank for the Commission to insert that date.

According to Mr. Wortham, Buena Vista has filed yet another application to increase its rates and begun collecting even higher amounts than proposed in this case. He asks that Buena Vista be ordered to stop collecting those even higher amounts. That new application is not the subject of this case, so the ALJ recommends no action concerning it in this case.

Summary of Recommended Changes

Based on the above, the ALJ recommends that the Commission adopt the proposed order that was attached to the PFD with the following changes, as indicated by strikethroughs for deletions and underlines for additions:

Findings of Fact

37. In December 2006, Buena Vista spent another \$2603.95 for another chlorinator. This additionally amount ~~was~~ was not used and useful to provide service during the test year and ~~should~~ should not be added to invested capital.
58. Based on the above, the Utility's net capital invested in water service is \$63,647 as shown below:

CALCULATION OF NET PLANT INVESTED	
Claimed	\$67,692
Pumps	\$66
Turbidity Monitor	\$570
Meters	\$-1,252
Office Equipment	\$-916
Printer Purchase In July 2007	\$-350
Dodge Truck	\$-9,460
Other Disallowances <u>Portable Turbidimeter/Replacement Meters</u>	<u>\$721</u>
<u>Working Capital Allowance</u>	<u>\$6,576</u>
Net Plant	<u>\$63,647</u>

68. Based on the above, the just and reasonable 12-percent return on Buena Vista's \$63,647 of capital usefully invested and used to provide water service is \$7,638.

Letter to Mr. Trobman
February 4, 2009

Exceptions Letter

4

78. Based on the above, the necessary and reasonable amount of payroll taxes to provide water services during the test year was \$1,544.
79. Based on the above, \$194 of the \$1,738 that Buena Vista claimed in its application for payroll taxes was not reasonable or necessary to provide water service and should be disallowed.
127. Based on the above, the income tax expense necessary and reasonable to provide water service is \$1,348, and \$240 should be disallowed from the amount claimed by Buena Vista.
137. Each 1-inch meters is equivalent to ~~7.5~~ 2.5 of the 5/8- and 3/4-inch meters.
139. Based on the above, Buena Vista's fixed and variable costs of service by major categories are as set out below:

FIXED AND VARIABLE COSTS OF SERVICE		
Item	Fixed	Variable
Salaries and wages	<u>\$7,500</u>	<u>\$7,500</u>
Contract labor	<u>\$756</u>	<u>\$84</u>
Purchased water	<u>\$0</u>	<u>\$3,841</u>
Chemicals for treatment	<u>\$0</u>	<u>\$1,729</u>
Utilities (electricity)	<u>\$0</u>	<u>\$4,137</u>
Repairs/maintenance/supplies	<u>\$2,378</u>	<u>\$2,378</u>
Office expenses	<u>\$2,640</u>	<u>\$2,640</u>
Accounting and legal fees	<u>\$4,200</u>	<u>\$0</u>
Insurance	<u>\$3,250</u>	<u>\$0</u>
Rate case expenses	<u>\$0</u>	<u>\$0</u>
Miscellaneous	<u>\$4,786</u>	<u>\$4,786</u>
Payroll taxes	<u>\$772</u>	<u>\$772</u>
Property and other taxes	<u>\$1,737</u>	<u>\$0</u>
Annual depreciation and amortization	<u>\$3,835</u>	<u>\$0</u>
Income taxes	<u>\$1,348</u>	<u>\$0</u>
Return	<u>\$7,638</u>	<u>\$0</u>

Conclusions of Law

18. Based on the above Findings of Fact and Conclusions of Law, \$31,714 should be disallowed from the \$94,943 revenue requirement that Buena Vista claimed in its application, as set out below:

Letter to Mr. Trobman
February 4, 2009

Exceptions Letter

5

CALCULATION OF DISALLOWANCES	
Expense Item	Disallowance
Return on invested capital	\$7,638
Payroll taxes	\$1,544
Office Expenses	\$4,480
Repairs and Maintenance	\$3,370
Accounting and Legal Expenses	\$2,300
Insurance Expense	\$852
Rate Case Expense	\$500
Miscellaneous Expenses	\$9,682
Federal income taxes	\$1,348
Total	\$31,714

28. Based on the above Findings of Fact and Conclusions of Law, the \$31,714 that should be disallowed from the ~~\$96,015~~ \$94,943 that the Buena Vista claimed as its revenue requirement exceeds the \$14,431.13 increase in revenue included in that ~~\$96,015~~ \$94,943.
29. Based on the above Findings of Fact and Conclusions of Law, Buena Vista's current rates are designed to recover \$17,283 more than its necessary and reasonable cost of service, including a return on and of its capital usefully invested and used to provide service.
30. Based on the above Findings of Fact and Conclusions of Law, Buena Vista's pre-application rates should be reduced so as to reduce its revenue by \$17,283.
32. Based on the above Findings of Fact and Conclusions of Law, Buena Vista rates should be changed as follows:

	CURRENT	NEW
Base monthly rate for 5/8 or 3/4-inch meter with zero gallons	\$33.00	<u>\$31.45</u>
Base monthly rate for 1-inch meter with zero gallons	\$48.41	<u>\$78.63</u>
Charge per 1,000 gallons	\$2.75	<u>\$2.75</u>
Transfer fee	\$0	\$20.00
Return check charge	\$20.00	\$25.00
Meter test fee	\$0	\$25.00

Ordering Provisions

3. Ms. Bryant shall immediately begin collecting the following rates:

Letter to Mr. Trobman
February 4, 2009

Exceptions Letter

6

	CURRENT	NEW
Base monthly rate for 5/8 or 3/4-inch meter with zero gallons	\$33.00	<u>\$31.45</u>
Base monthly rate for 1-inch meter with zero gallons	\$48.41	<u>\$78.63</u>
Charge per 1,000 gallons	\$2.75	<u>\$2.75</u>
Transfer fee	\$0	\$20.00
Return check charge	\$20.00	\$25.00
Meter test fee	\$0	\$25.00

Sincerely,



William G. Newchurch
Administrative Law Judge

WGN:nl
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: BUENA VISTA WATER SYSTEM

SOAH DOCKET NUMBER: 582-08-2245

REFERRING AGENCY CASE: 2007-1878-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ WILLIAM G. NEWCHURCH**

REPRESENTATIVE / ADDRESS

PARTIES

DOCKET CLERK
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
OFFICE OF THE CHIEF CLERK
PO BOX 13087
AUSTIN, TX 78711
(512) 239-3300 (PH)
(512) 239-3311 (FAX)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

LES TROBMAN
GENERAL COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
MC-175 P.O. BOX 13087
AUSTIN, TX 78711-3087

(512) 239-5533 (FAX)

TCEQ

KATHIE BRYANT
BUENA VISTA WATER SYSTEM
349 CR 139
BURNET, TX 78611-2837
(512) 793-2767 (PH)

BUENA VISTA WATER SYSTEM

RON OLSON
STAFF ATTORNEY
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
ENVIRONMENTAL LAW DIVISION
P.O. BOX 13087, MC-173
AUSTIN, TX 78711-3087
(512) 239-0608 (PH)
(512) 239-0606 (FAX)
rolson@tceq.state.tx.us

EXECUTIVE DIRECTOR

ELI MARTINEZ
PUBLIC INTEREST COUNSEL
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
12100 PARK 35 CIRCLE, MC-103, BUILDING F
AUSTIN, TX 78753
(512) 239-6363 (PH)
(512) 239-6377 (FAX)

OFFICE OF PUBLIC INTEREST COUNSEL

MICHAEL WORTHAM
P.O. BOX 1002
BUCHANAN DAM, TX 78609
(512) 793-2337 (PH)
(512) 793-4788 (FAX)

JOHN MILOY

MICHAEL WORTHAM

xc: Docket Clerk, State Office of Administrative Hearings

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

300 West 15th Street Suite 502

Austin, Texas 78701

Phone: (512) 475-4993

Fax: (512) 475-4994

DATE: **02/04/2009**

NUMBER OF PAGES INCLUDING THIS COVER SHEET: **2**

REGARDING: **EXCEPTIONS LETTER (BY ALJ)**

DOCKET NUMBER: **582-08-2245**

JUDGE WILLIAM G NEWCHURCH

FAX TO:

FAX TO:

MICHAEL WORTHAM

(512) 793-4788

ELI MARTINEZ (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-6377

RON OLSON (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-0606

LES TROBMAN (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-5533

DOCKET CLERK (TEXAS COMMISSION ON ENVIRONMENTAL QUALITY)

(512) 239-3311

MICHAEL WORTHAM

(512) 793-4788

KATHIE BRYANT

VIA REGULAR MAIL

TCEQ Docket Clerk, Fax Number 512/239-3311

NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT NORMA LOPEZ(nlo) (512) 475-4993

The information contained in this facsimile message is privileged and confidential information intended only for the use of the above-named recipient(s) or the individual or agent responsible to deliver it to the intended recipient. You are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone, and return the original message to us at the address via the U.S. Postal Service. Thank you.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 FEB -4 AM 8:17
CHIEF CLERKS OFFICE