

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 6, 2009

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 MAY - 6 PM 3: 53
CHIEF CLERKS OFFICE

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

VIA FACSIMILE 239-5533

Re: SOAH Docket No. 582-08-1719; TCEQ Docket No. 2008-0164-UCR;
Rate/Tariff Change Application of HHJ, Inc., d/b/a Decker Utilities

Dear Mr. Trobman:

I have reviewed the exceptions and replies submitted by HHJ, Inc., d/b/a Decker Utilities (HHJ), the Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission), and the Office of Public Interest Counsel (OPIC) regarding the Proposal for Decision (PFD) issued in the above-referenced case. As a result, I recommend the following changes to the PFD (see attachments):

1. Correct the typographic error in the second paragraph of Section VII to show that HHJ is seeking to recover \$30,197.23 in rate case expenses, not \$31,197.23.
2. Adopt the ED's exception related to inclusion of \$14,417 as a known and measurable expense, and delete the \$14,417 from the cost of service.
3. Due to the adoption of the ED's exception excluding \$14,417 from the cost of service, the ED's recalculations submitted with the exceptions will need to be changed accordingly. The ALJ asks the ED to provide the recalculations so that the draft Proposed Order may be properly revised.

I recommend no further changes to the Proposal for Decision in response to exceptions and replies.

Sincerely,

A handwritten signature in cursive script that reads "Sharon Cloninger".

Sharon Cloninger
Administrative Law Judge

SC/lh
Enclosures
cc: Mailing List

5. ALJ's analysis and recommendation

a. Allowable expenses

Overall, the ALJ finds most of Ms. Loockerman's calculations for allowable expenses to be reasonable and necessary to provide service to the ratepayers. While the Commission may disallow expenses not supported by invoices, receipts, and/or check stubs, as set out in Staff's calculations, the ALJ recommends that those expenses be allowed in this case. All of Ms. Loockerman's expenses are supported either by the general ledger in combination with invoices, receipts, and/or check stubs; the general ledger alone; or known and measurable changes to test year expenses incurred between January 1, 2007 and February 1, 2008. In addition, Ms. Loockerman removed from her calculations non-utility expenses, personal expenses, and expenses she found to be unreasonable, such as the year 2007 increase in insurance cost. The ALJ recommends that Ms. Loockerman's calculations for allowable expenses be adopted by the Commission except for the following ~~changes~~ change:

- ~~• **utility expenses.** Ms. Loockerman did not include a known and measurable increase of \$14,417 in utility expense in her calculations because she felt her charge for recalculating the cost of service would not be warranted. The ALJ finds this is a *bona fide* known and measurable expense that should be included in the cost of service.~~
- **repairs and maintenance expenses.** The ALJ could not determine if the invoice that was outside the test year and disallowed by Staff was also disallowed by Ms. Loockerman. If it was not disallowed in her calculations, it should be.¹¹⁶

b. Depreciation

As for depreciation, both Mr. Fenner and Mr. Mach agreed that trending analysis is more an art than a science. Mr. Fenner could not recall exactly which Handy-Whitman Index he used to perform the trending analyses for original costs of the water and sewer plants, but testified it was the

¹¹⁶ The ALJ invites the parties to address this expense in their exceptions to the Proposal for Decision.

recalculations based on the ALJ's recommendations and to include those along with the ED's exceptions to this Proposal for Decision.

Decker should refund any over recovery of rates that occurred during the pendency of this rate proceeding at 1.17 percent interest as a credit on customer's bills over a two-year period; customers who no longer receive service from Decker should receive a direct refund for the amount of over collection.¹⁶⁹

VII. CURRENT RATE CASE EXPENSES

As set out in 30 TAC § 291.28(7), a utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest. Under 30 TAC § 291.31(b)(2)(I), any expenditure found by the Commission to be unreasonable, unnecessary, or not in the public interest, including rate case expenses, may be disallowed as a component of cost of service.

Decker seeks to recover ~~\$31,197.23~~ \$30,197.23 in estimated rate-case expenses associated with this proceeding, in addition to the \$3,250 associated with filing the Application before the proposed rates were challenged. The \$3,250 is included in Decker's proposed cost of service.¹⁷⁰

¹⁶⁹ Ms. Perryman's amended testimony, ED Exh. 1-A, at 11. The 1.17 percent interest rate is set by the Public Utility Commission of Texas in 2004 for overbillings and underbillings. See Exh. EDSP-17, "Historical Record of Interest Rates Set by the Public Utility Commission, PUC" and 16 TAC § 25.28(c) (3)(A).

¹⁷⁰ Ms. Loockerman included the \$3,250 of rate case expense associated with filing the Application in the revenue requirement, because rate case expense is part of the normal operating expense for any regulated utility. Decker paid the Application fee out of normal operating funds, using working capital. If the \$3,250 is removed from normal operations, Decker would not be allowed working capital acknowledgement for this expense. Ms. Loockerman recommends that the Application filing expense of \$3,250 be amortized over two years in the cost of service, and any additionally incurred rate case expense due to the evidentiary proceedings be amortized over two years as a surcharge added to customers' monthly bills upon presentation of invoices and estimated completion costs. Ms. Loockerman's pre-filed testimony, Decker Exh. 1, at 16-17.

Insurance Expenses

22. Applicant's insurance expenses of \$14,432 counted as a note payable to Universal Premium Acceptance Corporation should be deleted from the debt portion of the Application, and counted only as part of insurance expenses.

Utility Expenses

23. Applicant's \$46,280 test year expenses for utilities, including electricity, was reasonable and necessary to provide water and sewer service.
- ~~24. Applicant's known and measurable change of an increase of \$14,417 in utility expenses should be included in the cost of service, and allocated between water and sewer equally for office utility bills, but directly to water or sewer for bills related only to the water plant, the sewer plant, and the lift stations.~~

RENUMBER REMAINING FINDINGS OF FACT

Rate Case Expenses

25. Applicant incurred reasonable and necessary rate case expenses in this matter in the amount of \$29,397.23 for preparation of the Application, including deriving the original plant and equipment costs, developing the proposed rate/tariff changes, filing fees, notice costs, and participation by experts and counsel in the contested case hearing.
26. Rate case expenses in this case were not a normal, recurring expense of operation.

Net Invested Capital

27. The Application shows Applicant's the net book value for its plant and equipment is \$564,076 for the water system and \$2,624,293 for the sewer system. These amounts do not accurately reflect the correct net book values for Applicant's plant and equipment.

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STYLE/CASE: HHJ, INC / DECKER UTILITIES

SOAH DOCKET NUMBER: 582-08-1719

REFERRING AGENCY CASE: 2008-0164-UCR

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ SHARON CLONINGER**

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