

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

May 20, 2009

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

VIA FACSIMILE 239-5533

2009 MAY 20 AM 11:08
CHIEF CLERKS OFFICE

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

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

Dear Mr. Trobman:

I have reviewed the Executive Director's Response to Administrative Law Judge's Request for Recalculation of Certain Rate Setting Data submitted May 11, 2009, and have revised the attached Proposed Order accordingly. Changes were made to Findings of Fact Nos. 24 and 33, and Conclusion of Law No. 10. Deleted wording is crossed out, and added wording is underlined.

I would like to express my sincere thanks to the Executive Director's staff for so quickly providing the requested recalculations.

Sincerely,

Sharon Cloninger
Sharon Cloninger
Administrative Law Judge

SC/mh
Enclosures
cc: Mailing List

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Approving the Application of
HHJ, Inc. d/b/a Decker Utilities to Change Water and Sewer Rates;
TCEQ Docket No. 2008-0164-UCR;
SOAH Docket No. 582-08-1719**

On _____, the Texas Commission on Environmental Quality (Commission) considered the application of HHJ, Inc. d/b/a Decker Utilities for water and sewer rate/tariff change and for recovery of rate case expenses through imposition of a surcharge on water and sewer customers. Administrative Law Judge (ALJ) Sharon Cloninger of the State Office of Administrative Hearings (SOAH) presented a Proposal for Decision (PFD) recommending that the Commission approve the requested rate changes, with modifications. After considering the PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

General and Procedural Findings

1. HHJ, Inc. d/b/a Decker Utilities (Applicant) holds Water Certificate of Convenience and Necessity (CCN) No. 12841 and Sewer CCN No. 20833.
2. On November 15, 2007, Applicant submitted to the Texas Commission on Environmental Quality (Commission) its application for water and sewer rate/tariff changes for CCN Nos. 12841 and 20833 (the Application), for its integrated utility system located in Montgomery County, Texas.

3. Applicant seeks an increase in revenues for water service in the amount of \$351,760.
4. Under the Application, the proposed rate increases were effective as of February 1, 2008.
5. Applicant timely provided notice of the proposed rate changes to its ratepayers and affected persons.
6. Within 60 days of the effective date of the proposed rate changes, at least 10 percent of Applicant's customers filed protests to the rate changes.
7. On January 31, 2008, the Commission referred the Application to the State Office of Administrative Hearings (SOAH) for a contested case hearing.
8. On March 29, 2008, notice of the hearing in this docket was provided to all affected persons.
9. On April 15, 2008, a preliminary hearing convened in this docket, at which time jurisdiction was taken and the following parties were admitted and designated: Applicant; the Executive Director (ED) of the Commission; the Office of Public Interest Counsel (OPIC); and Angela Arndt, Todd Arndt, Douglas Mendez, Stacy McCoy-Moquin, Richard Muse, and Larry Osborne (collectively, Protestants).
10. A hearing on the merits of the Application was held on October 14, 2008, at the SOAH field office in Houston, Texas. Applicant appeared through its attorney, Mark H. Zeppa; the ED appeared through Erin Selvera and Trey Jackson, staff attorneys; OPIC appeared through Christina Mann, staff attorney; and Protestants appeared through their representatives Ms. McCoy-Moquin and Mr. Osborne. The hearing recessed for the parties to negotiate a settlement. After the parties were unable to reach a settlement, the hearing reconvened on November 6, 2008, in Austin, Texas, with all parties participating in the proceeding.
11. The record closed on January 12, 2009, after the parties submitted written closing arguments.

Contract Labor Expenses

- 15. During the test year, Applicant incurred \$4,800 in miscellaneous contract labor, mainly for office and clerical work; after the test year, Applicant hired a second certified operator, as required for a utility of Applicant's size, at a cost of \$21,600 per year.
- 16. The aforementioned contract labor expenses incurred during the test year and after as known and measurable changes were reasonable, necessary, and typical.

Repair and Maintenance Expenses

- 17. During the test year, Applicant's repair and maintenance expenses used in the determination of its rate request were actually incurred, were reasonable, and were typical of the types of repair and maintenance needs occurring regularly.

Office Expenses

- 18. In calculating the rates sought in this proceeding, Applicant determined that it has total rent expenses (included within office expenses) of \$7,788 per year, which is split equally between the water and sewer systems. This amount accurately reflects Applicant's reasonable and necessary rent expenses.
- 19. Applicant's calculated office expenses (which include rent expenses) of \$24,717 are reasonable and necessary for Applicant to provide service to its customers.

Legal and Accounting Expenses

- 20. Applicant's insurance expense of \$18,741 is reasonable and necessary to provide water and sewer service to its customers.
- 21. Applicant's legal and accounting expenses of \$9,071 normalized over the test year and 2007 are reasonable and necessary for Applicant to provide service to its customers.

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.~~

Rate Case Expenses

24. 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.

25. Rate case expenses in this case were not a normal, recurring expense of operation.

Net Invested Capital

26. 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.

- 27. Original plant and equipment costs were derived from a combination of historic data and application of trending analysis.
- 28. The correct net book value for Applicant's plant and equipment is \$564,076 for the water system, but the sewer system net book value should be adjusted based on total accumulated depreciation of \$305,966 for man holes rather than \$101 as used to arrive at the \$2,624,293 figure.

Depreciation

- 29. In its Applications, as revised at the hearing, Applicant determined that it had annual depreciation expense of \$9,639 for the water system and \$13,308 for the sewer system. These amounts do not accurately reflect the correct depreciation expense incurred by Applicant.
- 30. Applicant's reasonable and necessary annual depreciation expense for sewer should be adjusted to show total accumulated depreciation of \$305,966 for man holes rather than \$101.

Rate of Return

- 31. Twelve percent (12%) is a fair return on investment for Applicant to receive because it is reasonable in light of Applicant's weighted cost of capital and is consistent with the returns available from other investments of similar risk.
- 32. Applicant pays 6.75 percent interest on its debt to Hybernia National Bank.
- ~~33. Applicant's reasonable weighted cost of capital is _____ percent.~~
- 33. Applicant's reasonable weighted cost of capital for water is 9.5449 percent and for sewer is 9.4888 percent.

Rate Design

- 34. Applicant incorrectly used 613.5 customer or meter equivalents in its water rate design. The correct customer or meter equivalent for water rate design is 641.5.

Refunds

- 35. Because of the adjustments adopted by the Commission in this order, Applicant has received an over-recovery of rates (*i.e.*, overpayment by customers) during the pendency of this rate case.
- 36. After accounting for interest, the total refunds due to Applicant's customers for overcharges is \$ _____ for the water system and \$ _____ for the sewer system.

Miscellaneous

- 37. Non-rate fees and charges, and service policies in the proposed rate/tariff are consistent with Commission rules and with tariffs approved by the Commission for other similarly-situated utilities.

CONCLUSIONS OF LAW

- 1. Applicant is a public utility as defined in TEX. WATER CODE ANN. § 13.002(23).
- 2. The Texas Commission on Environmental Quality has jurisdiction to consider an application for a rate increase filed by a public utility, pursuant to TEX. WATER CODE ANN. § 13.181.
- 3. The ALJ conducted a contested case hearing and issued a proposal for decision on the Applicant's proposed water and sewer rate/tariff changes under TEX. GOV'T. CODE ANN. ch. 2003, TEX. WATER CODE ANN. ch. 13, and 30 TEX. ADMIN. CODE chs. 80 and 291.
- 4. Proper notice of the Application was given by the Applicant as required by TEX. WATER CODE ANN. § 13.187, 30 TEX. ADMIN. CODE §§ 291.22 and 291.28, and TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.

5. The invested capital amounts set forth in the Findings of Fact above are based on the original cost of property used by and useful to the Applicant in providing service, less depreciation, in accordance with TEX. WATER CODE ANN. § 13.185.
6. The revenue requirements are based on Applicant's reasonable and necessary operating expenses, within the meaning of TEX. WATER CODE ANN. §§ 13.183 and 13.185.
7. The revenue requirements are sufficient to provide Applicant with a reasonable opportunity to earn a fair and equitable return on its invested capital while preserving its financial integrity, within the meaning of TEX. WATER CODE ANN. §§ 13.183 and 13.184.
8. The rates and fees to be charged by Applicant, as approved by the Commission in this Order, are just and reasonable, not unreasonably preferential, prejudicial, or discriminatory, and sufficient, equitable, and consistent in application to each class of customer in accordance with TEX. WATER CODE ANN. §§ 13.182, 13.189, and 13.190.
9. Rate case expenses in the amount of \$29,397.23 were a reasonable and necessary cost within the meaning of TEX. WATER CODE ANN. § 13.185(d) and (h), and recovery of these costs through a monthly surcharge of \$ _____ per customer for two years, or until the amount is paid, complies with 30 TEX. ADMIN. CODE § 291.21(k) for collection of revenues over and above the usual cost of service.

10. The following rates are appropriate to implement the Commission's rulings in this matter:

Water

Sewer

Minimum Bill (including 0 gallons)

Minimum Bill (including 0 gallons)

5/8" x 3/4"	\$ <u>21.33</u>
1"	\$ <u>53.33</u>
1-1/2"	\$ <u>106.67</u>
2"	\$ <u>170.67</u>
3"	\$ <u>320.00</u>
4"	\$ <u>533.33</u>
6"	\$ <u>1,066.66</u>
8"	\$ <u>1,706.66</u>

5/8" x 3/4"	\$ <u>63.71</u>
1"	\$ <u>63.71</u>
1-1/2"	\$ <u>63.71</u>
2"	\$ <u>63.71</u>
3"	\$ <u>63.71</u>
4"	\$ <u>63.71</u>
6"	\$ <u>63.71</u>
8"	\$ <u>63.71</u>

Gallonge Rate

Gallonge Rate

\$ 2.29 per each 1,000 gallons

\$ 4.00 per each 1,000 gallons

11. The appropriate interest rate to be applied to overcharges collected by the Applicant during the pendency of this rate case is 1.17 percent. After accounting for interest at this rate, the total refunds due customers for overcharges is \$ _____ for the water system and \$ _____ for the sewer system.

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

1. The Application of HHJ, Inc. d/b/a Decker Utilities for water and sewer rate/tariff changes are granted as modified by, and to the extent set forth in, the above Findings of Fact and Conclusions of Law.
2. The request of HHJ, Inc. d/b/a Decker Utilities to apply a surcharge to recover rate case expenses in the amount of \$29,397.23, to be recovered as a monthly surcharge of \$ _____

to each water and sewer customer for two years or until paid, is approved. The surcharge shall be discontinued at such time as the amount of \$29,397.23 is recovered.

3. HHJ, Inc. d/b/a Decker Utilities shall refund customers, for a period of _____ months, the amount of \$_____ per water connection per month and \$_____ per sewer connection per month for the over-recovery of rates that occurred during the pendency of this rate proceeding. This refund shall occur in the form of a credit on customers' bills. Customers who no longer take service from HHJ, Inc. d/b/a Decker Utilities shall have the total amount of refund paid directly to them.
4. HHJ, Inc. d/b/a Decker Utilities shall file a report to the Commission's Utilities and Districts Section, Water Supply Division, demonstrating compliance with the refund requirements of this Order. This report shall be filed each quarter until such time that all overcharges have been refunded.
5. HHJ, Inc. d/b/a Decker Utilities shall file a tariff reflecting the rates approved by the Commission within 10 days of the date of this Order.
6. HHJ, Inc. d/b/a Decker Utilities shall notify customers by mail of the final rate structure within 30 days of the date of this Order and shall include the statement required by 30 TEX. ADMIN. CODE § 291.28(5) along with the first bill to customers implementing the rates approved by this Order.
7. The effective date of this Order is the date the Order is final, as provided by TEX. GOV'T CODE ANN. § 2001.144 and 30 TEX. ADMIN. CODE § 80.273.

- 8. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief not expressly granted herein, are hereby denied for want of merit.
- 9. The Chief Clerk of the Texas Commission on Environmental Quality shall forward a copy of this Order and tariff to the parties.
- 10. 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:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Buddy Garcia, Chairman

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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

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JUDGE SHARON CLONINGER

FAX TO:

FAX TO:

Table with 2 columns: Recipient Name and Contact Information. Rows include Stacy McCoy-Moquin, Larry Osborne, Mark Zeppa, Christina Mann, Erin Selvera, Les Trobman, and Docket Clerk.

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NOTE: IF ALL PAGES ARE NOT RECEIVED, PLEASE CONTACT LISA HORNBACK(lho) (512) 475-4993

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