

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

January 12, 2011

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

**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:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Supplement to Amended Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the original documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than February 1, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than February 11, 2011.

This matter has been designated **TCEQ Docket No. 2008-0164-UCR; SOAH Docket No. 582-08-1719**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

  
Sharon Cloninger  
Administrative Law Judge

SC/lh  
Enclosures  
cc: Mailing List

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**AGENCY:** Environmental Quality, Texas Commission on (TCEQ)

**STYLE/CASE:** HHJ, INC / DECKER UTILITIES

**SOAH DOCKET NUMBER:** 582-08-1719

**REFERRING AGENCY CASE:** 2008-0164-UCR

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**STATE OFFICE OF ADMINISTRATIVE  
HEARINGS**

**ADMINISTRATIVE LAW JUDGE  
ALJ SHARON CLONINGER**

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**REPRESENTATIVE / ADDRESS**

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PROTESTANTS

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xc: Docket Clerk, State Office of Administrative Hearings

**SOAH DOCKET NO. 582-08-1719**  
**TCEQ DOCKET NO. 2008-0164-UCR**

|                                       |          |                                |
|---------------------------------------|----------|--------------------------------|
| <b>APPLICATION OF HHJ, INC. DBA</b>   | <b>§</b> | <b>BEFORE THE STATE OFFICE</b> |
| <b>DECKER UTILITIES TO CHANGE ITS</b> | <b>§</b> |                                |
| <b>WATER AND SEWER TARIFF IN</b>      | <b>§</b> | <b>OF</b>                      |
| <b>MONTGOMERY COUNTY, TEXAS</b>       | <b>§</b> |                                |
|                                       | <b>§</b> | <b>ADMINISTRATIVE HEARINGS</b> |

**SUPPLEMENT TO AMENDED PROPOSAL FOR DECISION**

On June 16, 2010, the Texas Commission on Environmental Quality (the Commission or TCEQ) considered the Amended Proposal for Decision (PFD) and Amended Proposed Order in this case during its open meeting. The Commission determined to remand this matter to the State Office of Administrative Hearings (SOAH) for the Administrative Law Judge (ALJ) to take additional evidence regarding the recovery of rate case expenses by HHJ, Inc. d/b/a Decker Utilities (Applicant) and a refund to Applicant's customers for water and sewer rate overcharges. This Supplement to the Amended PFD recommends (1) that Applicant recover a total of \$14,698.62 in rate case expenses through a surcharge of \$1.13 per customer per month over 24 months and (2) that Applicant refund overcharges to its customers based on the difference between its proposed rates and the ALJ's recommended rates, using the refund amount calculated by the Executive Director (ED) of the Commission.

**I. PROCEDURAL HISTORY**

The second remand hearing convened October 26, 2010, before ALJ Sharon Cloninger at SOAH, William P. Clements State Office Building, 300 West 15th Street, Fourth Floor, Austin, Texas.<sup>1</sup> Applicant appeared through Mark H. Zeppa, attorney. Protestant Stacey McCoy-Moquin appeared in person and Protestant Larry Osborne appeared by telephone. Staff Attorney

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<sup>1</sup> The original contested case hearing was held October 14, 2008. After issuance of the PFD, the Commission remanded the case to SOAH. The first remand hearing was held October 5, 2009.

Erin Selvera represented the ED. Blas J. Coy, Jr., Public Interest Counsel, appeared on behalf of the Office of Public Interest Counsel (OPIC).

The record closed November 23, 2010, after the parties had the opportunity to file written closing arguments and replies. Only the ED and OPIC filed written closing arguments; the ED also filed a correction to its proposed findings. No party filed a reply brief.

## II. THE COMMISSION'S SECOND INTERIM ORDER

The Commission's Second Interim Order (Order), issued on June 30, 2010, allowed the ALJ to re-open the record to determine (1) how much Applicant is entitled to recover in rate case expenses through a monthly surcharge to its customers and (2) how much of a refund Applicant owes its customers for charging its proposed rates during the pendency of its application (Application).<sup>2</sup>

Specifically, the ALJ was instructed to determine if the revenue generated from the rates proposed in Protestants' written settlement offer would trigger the rate case expense limitation in 30 TEX. ADMIN. CODE (TAC) § 291.28(9) (Settlement Offer Rule); the applicability of 30 TAC § 291.28(8) (51 Percent Rule) regarding prohibition of rate case expense recovery; the monthly surcharge amount needed for Applicant to recover the allowed rate case expenses over 2 years; and calculations showing the total amount and monthly amounts per connection for the refund or credit of overcharges based on the ALJ's proposed rates, a 0.61 percent interest rate, and a 24-month refund period.

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<sup>2</sup> Applicant has charged its proposed water and sewer rates since February 2008. Pre-filed testimony of Debi Loockerman, Applicant Ex. 1, at 59.

### III. DISCUSSION

The ED offered 11 exhibits, which were admitted, presented the testimony of TCEQ Staff Engineer Heidi Graham and TCEQ Water Supply Division Auditor Sheresia Perryman; and called Protestant McCoy-Moquin as a witness. Protestant McCoy-Moquin also testified on behalf of Protestants. Neither Applicant nor OPIC presented any evidence.

#### A. Effect of Settlement Offer on Applicant's Recovery of Rate Case Expenses

##### 1. Settlement Offer Rule

The Settlement Offer Rule, set out in 30 TAC § 291.28(9), applies to the amount of surcharge Applicant may bill its customers to recover its rate case expenses in this matter and states:

A utility may not recover any rate case expenses incurred after the date of a written settlement offer by all ratepayer parties if the revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than or equal to the revenue that would have been generated by the rate contained in the written settlement offer.

##### 2. Protestants' Settlement Offer

On October 20, 2008, Protestants sent a settlement offer to Applicant that was rejected the same day.<sup>3</sup> Protestants proposed a monthly base water rate of \$20 with a 0 base gallonage and a fee of \$2.29 for each 1,000 gallons consumed. They proposed a monthly base sewer rate of \$50 with a fee of \$4 per 1,000 gallons, based on the winter average taken during December, January, and February.<sup>4</sup>

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<sup>3</sup> Exhibit ED-R2-1 and testimony of Protestant McCoy-Moquin.

According to the ED's calculations, Protestants' proposed water rates would have generated \$130,080 in total annual revenue for 542 connections, more than the \$116,941.92 in total annual revenue that would be generated by the ALJ's recommended water rates.<sup>5</sup> Therefore, the Settlement Offer Rule precludes Applicant from recovering post-settlement offer rate case expenses associated with its proposed water rates.

But Protestants' proposed sewer rates would have generated \$325,200 in total annual revenue for 542 connections, less than the \$331,053 that would be generated by the ALJ's recommended rates.<sup>6</sup> Therefore, the Settlement Offer Rule does not apply to Applicant's proposed sewer rates.

### **3. Applicant's Rate Case Expenses**

The ED offered four exhibits outlining the rate case expenses claimed by Applicant. Ms. Perryman testified that she used Applicant's Replies to Closing Argument and attached invoices—submitted to SOAH on December 16, 2008, after the initial contested case hearing—to determine the total amount of rate case expenses claimed by Applicant.<sup>7</sup> Ms. Perryman used the information to create spreadsheets showing whether the expenses claimed were before or after Protestants' settlement offer.<sup>8</sup> She testified that Applicant claimed \$24,725.48 in pre-settlement offer rate case expenses, including \$8,704.99 for Applicant's counsel and \$16,020.49 for Applicant's consultants.<sup>9</sup>

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<sup>4</sup> Exhibit ED-R2-2.

<sup>5</sup> Exhibit Ed-R2-9. During the test year, there were 542 water customers and 542 sewer customers. Ms. Loockerman's pre-filed testimony, Applicant Ex. 1 at 4.

<sup>6</sup> Exhibit ED-R2-9.

<sup>7</sup> Exhibit ED-R2-4.

<sup>8</sup> Exhibits ED-R2-5 and ED-R2-6.

<sup>9</sup> Exhibit ED-R2-5 documents the rate case expenses claimed by Applicant's counsel based on Invoices from the Law Offices of Mark Zeppa, P.C. Exhibit ED-R2-6 documents the rate case expenses claimed by Applicant's consultants based on Invoices from B&D Environmental, Inc.

Applicant claimed a total of \$4,671.75 in post-settlement offer rate case expenses, Ms. Perryman said.<sup>10</sup> The sum of pre-settlement offer and post-settlement offer rate case expenses is \$29,397.23.

#### 4. ED's Calculations Based on Settlement Offer Rule

Ms. Graham presented her calculations showing that Applicant would be precluded from recovering the half of its post-settlement offer rate case expenses associated with the water rate, but not the half of its post-settlement offer rate case expenses associated with the sewer rate.<sup>11</sup> She assumed a total rate case expense of \$29,397.23, attributing half to water and half to sewer, or \$14,698.62 to each, because Applicant had an equal number of water and sewer customers during the test year. She further divided the post-settlement offer rate case expense of \$4,671.75 in half and subtracted the resulting \$2,335.87 from the \$14,698.62 attributed to water, for a remainder of \$12,362.74, because Applicant is precluded from recovering its post-settlement offer rate case expenses associated with water. Adding the \$14,698.62 attributable to sewer and the \$12,362.74 for water results in \$27,060.86 in recoverable rate case expenses after application of the Settlement Offer Rule. The monthly surcharge necessary for recovery of the rate case expenses, applying only the Settlement Offer Rule, would be \$2.08 per customer over 24 months.

However, as set out below, the 51 Percent Rule also applies, further reducing the amount of rate case expenses Applicant may recover.

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<sup>10</sup> See Exhibits ED-R2-5, ED-R2-6, and ED-R2-7. The total post-settlement offer rate case expenses noted in the ED's exhibits do not include \$800 claimed by Applicant to cover Motions for Rehearing, because this amount was disallowed by the ALJ in the Amended PFD.

<sup>11</sup> Exhibit ED-R2-9.

**B. Applicability of the 51 Percent Rule**

**1. The 51 Percent Rule**

The 51 Percent Rule, at 30 TAC § 291.28(8), states:

A utility may not recover any rate case expenses if the increase in revenue generated by the just and reasonable rate determined by the commission after a contested case hearing is less than 51 percent of the increase in revenue that would have been generated by a utility's proposed rate.

**2. ED's Calculations and Recommendation**

Using figures listed in the table below, Ms. Graham determined the increase in annual revenue from Applicant's original water rate to Applicant's proposed water rate to be \$40,194.72. She found 51 percent of \$40,194.72 to be \$20,499.31. She calculated the change in annual revenue from Applicant's original water rate to the ALJ's recommended water rate to be a *decrease* of \$11,186.88 [emphasis added].<sup>12</sup> A decrease in annual revenue of \$11,186.88 is less than \$20,499.31 (51 percent of the increase in revenue that would have been generated by Applicant's proposed rate). Ms. Graham concluded that the 51 Percent Rule precludes Applicant from recovering rate case expenses associated with the water rate.

| <b>WATER</b>         | <b>Rate</b> | <b>Annual Revenue Generated by 542 Connections</b> |
|----------------------|-------------|--|
| Applicant's Original | \$19.70     | \$128,128.80                                       |
| Applicant's Proposed | \$25.88     | \$168,323.52                                       |
| ALJ's Recommendation | \$17.98     | \$116,941.92                                       |

<sup>12</sup> Exhibit ED-R2-10 lists the \$11,186.68 as an increase in annual revenue, but the amount clearly represents a decrease in annual revenue. The ALJ calculated the decrease in revenue of \$11,186.88 to be an 8.73 percent decrease in the \$128,128.80 annual revenue generated by Applicant's original rate. (Exhibit ED-R2-10 states there is an 8.73 percent increase from Applicant's original rate to the ALJ's recommended rate.)

Using figures listed in the following table, Ms. Graham determined the increase in revenue generated by the ALJ's recommended sewer rate would be \$135,933.60. She calculated the increase in annual revenue from Applicant's original sewer rate to Applicant's proposed sewer rate to be \$225,493.68. She found 51 percent of \$225,493.68 to be \$115,001.78. The ALJ's recommended sewer rate revenue increase of \$135,933.60 is 69.67 percent of Applicant's proposed increase of \$225,493.68. Therefore, Ms. Graham concluded, the 51 Percent Rule does not preclude Applicant from recovering rate case expenses associated with the sewer rate.

| <b>SEWER</b>         | <b>Rate</b> | <b>Annual Revenue Generated for 542 Connections</b> |
|----------------------|-------------|---|
| Applicant's Original | \$30.00     | \$195,120.00  |
| Applicant's Proposed | \$64.67     | \$420,613.68  |
| ALJ's Recommendation | \$50.90     | \$331,053.60  |

Ms. Graham calculated the amount of rate case expenses Applicant could recover if the 51 Percent Rule were applied. Based on her calculations, Applicant could recover \$0.00 for rate case expenses attributable to the water rate application and \$14,698.62 for rate case expenses attributable to the sewer rate application, resulting in a surcharge of \$1.13 per customer per month over 24 months.<sup>13</sup>

### **3. ALJ's Conclusion and Recommendation**

Based on Ms. Graham's Settlement Offer Rule calculations, and her conclusions regarding applicability of the 51 Percent Rule, Applicant cannot recover any rate case expenses attributable to the water rate application, but may recover \$14,698.62 for rate case expenses attributable to the sewer rate application, resulting in a surcharge of \$1.13 per customer per month over 24 months.<sup>14</sup>

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<sup>13</sup> Exhibit ED-R2-11.

<sup>14</sup> See Exhibit ED-R2-11.

The ALJ therefore recommends that the Commission allow Applicant to collect a \$1.13 per customer per month surcharge for 24 months to recover \$14,698.62 in rate case expenses.

### **C. Refund of Overcharges**

#### **1. Applicable Law**

Applicant has charged customers its proposed water and sewer rates since February 2008, after filing the Application in November 2007.<sup>15</sup> If the Commission adopts the ALJ's recommended rates, which are lower than Applicant's proposed water and sewer rates, Applicant's customers will be due a refund for the overcharges. The parties have not presented an agreement related to the refund of rate overcharges.

The applicable rule at 30 TAC § 291.29(h) states:

Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission in a reasonable number of monthly installments.

In its Order, the Commission asked for calculations showing the total amount and monthly amounts per connection for the refund or credit of overcharges based on the ALJ's proposed rates, a 0.61 percent interest rate, and a 24-month refund period.

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<sup>15</sup> Pre-filed testimony of Ms. Loockerman, Applicant Ex. 1 at 25.

## 2. ED's Recommendation and Parties' Positions

The ED recommends adoption of refunds for overcharges, using the ED's calculations, based on the number of months that Applicant's proposed rates have been charged, as of the date the final rates are adopted by the Commission. OPIC agrees with the ED's recommendation.<sup>16</sup> At the hearing, Applicant offered no verbal opposition to the ED's recommendation and, as stated above, did not file a written closing argument or reply to closing arguments after the hearing. Protestants did not disagree with the ED's calculations, but Protestant McCoy-Moquin asked that refunds to herself and Protestant Osborne be made in a lump sum rather than over 24 months due to expenses they have incurred protesting the Application.

The ED offered calculations showing refunds owed to customers for water and sewer rate overcharges based on the factors specified in the Order.<sup>17</sup> Ms. Graham testified that as of the second remand hearing date, Applicant's proposed water and sewer rates had been charged for 33 months. She said the refund owed to customers as of the hearing date, based on the ALJ's proposed rates and a 0.61 percent interest rate, was \$10.93 per water customer per month over 24 months and \$19.05 per sewer customer per month over 24 months.<sup>18</sup> Because the calculations use a specific number of months over which the refund is to be credited, and the amount of overcharges increases with each additional month the proposed rates are charged, the amount of refund owed to customers will increase each month until the final rates are established by the Commission.

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<sup>16</sup> OPIC's Closing Argument on Second Remand at 2.

<sup>17</sup> See Exhibits ED-R2-3 and ED-R2-8.

<sup>18</sup> Exhibit ED-R2-8.

### 3. ALJ's Conclusion and Recommendation

The evidence shows Applicant's customers are entitled to a refund or credit for overcharges imposed since February 2008. Therefore, the ALJ recommends that Applicant's customers be refunded an amount calculated by the ED, based on the requirements set out by the Commission in its Order, once final rates are adopted.

## VI. CONCLUSION AND RECOMMENDATION

Based on the evidence presented, the ALJ recommends that the Commission allow Applicant to collect a \$1.13 per customer per month surcharge for 24 months to recover \$14,698.62 in rate case expenses.

The ALJ further recommends that Applicant refund overcharges to its customers based on the final adopted rates, a 0.61 percent interest rate, and a 24-month refund period. Customers who no longer receive service from Applicant should receive a direct refund for the amount of over collection. Protestant McCoy-Moquin requested a lump sum refund for herself and Protestant Osborne, but the ALJ is aware of no provision that permits a lump sum recovery of overcharges for existing utility customers, and the Commission ordered that the refund be paid over 24 months. Therefore, the ALJ cannot recommend that Protestants receive their refund in a lump sum.

SIGNED January 12, 2011.

  
SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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 an Amended Proposal for Decision (Amended PFD) and Supplement to Amended PFD recommending that the Commission approve the requested rate changes, with modifications; that Applicant be allowed to recover \$14,698.62 in rate case expenses; and that Applicant refund its customers overcharges based on the difference between its proposed rates and the rates adopted by the Commission. After considering the Amended PFD and Supplement to Amended 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 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 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.
  12. SOAH issued a Proposal for Decision on March 12, 2009.
  13. The Commission considered the PFD on June 26, 2009.
  14. The Commission issued an interim order on July 21, 2009, remanding the case to SOAH for an additional hearing on the issue of Applicant's undocumented cost of service expenses.
  15. On November 30, 2009, a hearing on the remanded issue was convened at SOAH in Austin, Texas. Applicant appeared through its attorney, Mark H. Zeppa; the ED appeared through Erin Selvera, Staff Attorney; OPIC appeared through Blas Coy, Public Interest Counsel; and Protestants appeared through their representatives Ms. McCoy-Moquin and Mr. Osborne.
  16. The record closed January 18, 2010, after the parties had an opportunity to submit written closing arguments and responses.
  17. SOAH issued an Amended Proposal for Decision (Amended PFD) on March 17, 2010.
  18. The Commission considered the Amended PFD on June 16, 2010.
  19. The Commission entered a second interim order on June 30, 2010, remanding the case to SOAH for an additional hearing on the issue of Applicant's recovery of rate case expenses and the amount of refund owed its customers for overcharges.
  20. The second remand hearing convened October 26, 2010, before ALJ Sharon Cloninger at SOAH in Austin, Texas. Applicant appeared through Mark H. Zeppa, attorney. Protestant Stacey McCoy-Moquin appeared in person and Protestant Larry Osborne appeared by telephone. Staff Attorney Erin Selvera represented the ED. Blas J. Coy, Jr., Public Interest Counsel, appeared on behalf of the Office of Public Interest Counsel. The hearing concluded

that same day. The record closed November 23, 2010, after the parties had the opportunity to submit written closing arguments.

21. During the test year, which ran from January 1-December 31, 2006, Applicant provided water and sewer service to 542 connections.
22. Applicant requested by its Application the following rates, which it implemented on February 1, 2008:

| <u>Water</u>                                      |          | <u>Sewer</u>                                      |         |
|---|----------|---|---------|
| <u>Minimum Bill</u>                               |          | <u>Minimum Bill</u>                               |         |
| 5/8" or 3/4"                                      | \$25.88  | 5/8" or 3/4"                                      | \$64.67 |
| 1"  | \$64.70  | 1"  | \$64.67 |
| 1 1/2"  | \$129.40 | 1 1/2"  | \$64.67 |
| 2"  | \$207.04 | 2"  | \$64.67 |
| 3"  | \$388.20 | 3"  | \$64.67 |
| 4"  | \$517.60 | 4"  | \$64.67 |
| 6"  | \$569.36 | 6"  | \$64.67 |
| <br><u>Gallonage Rate</u>                         |          | <br><u>Gallonage Rate</u>                         |         |
| \$2.29 for each 1,000 gallons<br>over the minimum |          | \$4.00 for each 1,000 gallons<br>over the minimum |         |

Salary and Wage Expenses

23. Applicant's reasonable and necessary salary and wage expenses are \$146,000 for providing water and sewer service.
  - a. Applicant's utility, which has 542 connections each for water and sewer, requires at least two office personnel, two certified operators, and one plant superintendent to provide adequate service to its customers.
  - b. Salaries and wages of \$104,000 annually are required to pay Applicant's two office personnel and plant superintendent.

- c. A salary of \$42,000 annually is required to pay Robert Weedn, Applicant's owner and manager, and one of its certified operators.

#### Contract Labor Expenses

24. 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.
25. 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

26. During the test year, Applicant incurred \$44,236.97 that was reasonable and necessary to provide service.
27. Applicant's repair and maintenance expenses of \$45,996 used in determination of its rate request should be adjusted to disallow undocumented expenses of \$881 that were not shown to be reasonable and necessary to provide service.

#### Office Expenses

28. In calculating the rates sought in this proceeding, Applicant claimed total rent 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.
29. Applicant's calculated office expenses of \$24,717—which includes the \$7,788 in rent—is not reasonable and necessary for Applicant to provide service to its customers.
30. Including the cost of rent, Applicant's underlying documentation supports reasonable and necessary office expenses of \$21,062.

### Legal and Accounting Expenses

31. Applicant has not shown all of its claimed legal and accounting expenses of \$9,071 normalized over the test year and 2007 were reasonable and necessary for Applicant to provide service to its customers.
32. Applicant's underlying documentation supports legal and accounting expenses of \$6,728.

### Insurance Expenses

33. Applicant's insurance expense of \$18,741 is reasonable and necessary to provide water and sewer service to its customers.
34. 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

35. Applicant's \$46,280 test year expenses for utilities, including electricity, was reasonable and necessary to provide water and sewer service.

### Rate Case Expenses

36. 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.
37. Applicant did not submit rate case expenses associated with the remand proceeding.
38. Rate case expenses in this case were not a normal, recurring expense of operation.

### Net Invested Capital

39. The Application shows Applicant's net book value for plant and equipment as \$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.
40. Original plant and equipment costs were derived from a combination of historic data and application of trending analysis.
41. The reasonable and necessary net book value for Applicant's plant and equipment is \$427,910 for the water system.
42. The reasonable and necessary original cost of Applicant's sewer system plant was \$2,404,722, the annual depreciation is \$48,546, the accumulated depreciation is \$237,601, and the net book value is \$2,167,120.

### Depreciation

43. In its Applications, as revised at the hearing, Applicant determined that it had annual depreciation expense of \$20,255 for the water system and \$57,018 for the sewer system. These amounts do not accurately reflect the correct depreciation expenses incurred by Applicant.
44. The reasonable and necessary annual depreciation expense for the water system is \$15,983 and for the sewer system is \$48,546.

### Rate of Return

45. 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.
46. Applicant pays 6.75 percent interest on its debt to Hybernia National Bank.

47. Applicant's reasonable weighted cost of capital for water is 8.8541 percent and for sewer is 9.0749 percent.

#### Rate Design

48. 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.

#### Effect of Settlement Offer Rule on Applicant's Recovery of Rate Case Expenses

49. 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.
50. Applicant did not submit rate case expenses associated with the remand proceeding.
51. Rate case expenses in this case were not a normal, recurring expense of operation.
52. On October 20, 2008, Protestants submitted a settlement offer to Applicant.
53. Protestants' settlement offer proposed a monthly base water rate of \$20 with a 0 base gallonage and a fee of \$2.29 for each 1,000 gallons consumed, which would have generated \$130,080 in total annual revenue for 542 water connections.
54. The ALJ's recommended water rates would generate \$116,941.92 in annual general revenue, less than the \$130,080 that would have been generated by Protestants' proposed rates.
55. Protestants' settlement offer proposed a monthly base sewer rate of \$50 with a fee of \$4 per 1,000 gallons, based on the winter average taken during December, January, and February, which would have generated \$325,200 in total annual revenue for 542 connections.

56. The ALJ's recommended sewer rates would generate \$331,053 in total annual revenue, more than the \$325,200 generated by Protestants' settlement offer.
57. On October 20, 2008, Applicant rejected Protestants' settlement offer.
58. Before October 20, 2008, Applicant incurred \$24,725.48 in rate case expenses.
59. After rejecting Protestants' settlement offer, Applicant incurred \$4,671.75 in rate case expenses.
60. The Commission's rule set out in 30 TEX. ADMIN. CODE (TAC) § 291.28(9) (Settlement Offer Rule) applies to Applicant's recovery of rate case expenses.
61. Under the Settlement Offer Rule, Applicant is precluded from recovering the half of its post-settlement offer rate case expenses associated with the water rate, because the revenue generated by the ALJ's recommended water rate is less than the revenue that would be generated by Protestants' proposed water rate.
62. Because Applicant had 542 water connections and 542 sewer connections in the test year of 2006, the rate case expenses should be apportioned equally between water and sewer.
63. Half of the total rate case expenses is \$14,698.62.
64. Half of the post-settlement offer rate case expenses is \$2,335.87.
65. Subtracting half of the post-settlement offer rate case expenses from the \$14,698.62 allocated to the water rate results in rate case expenses of \$12,362.74 applicable to water.
66. Under the Settlement Offer Rule, Applicant is not precluded from recovering the \$14,698.62 in rate case expenses associated with sewer, because the revenue generated by the ALJ's recommended sewer rate is more than the revenue that would be generated by Protestants' proposed rate.

67. Adding the \$14,698.62 attributable to sewer and the \$12,362.74 for water results in \$27,060.86 in recoverable rate case expenses after application of the Settlement Offer Rule.
68. The monthly surcharge necessary for recovery of rate case expenses, applying only the Settlement Offer Rule, would be \$2.08 per customer over 24 months.

Applicability of the 51 Percent Rule

69. The annual revenue generated by Applicant's original water rate was \$128,128.80; by Applicant's proposed water rate is \$168,323.52; and by the ALJ's recommended rate is \$116,941.92.
70. The increase in revenue from Applicant's original water rate to Applicant's proposed water rate is \$40,194.72, of which 51 percent is \$20,499.31.
71. The difference between Applicant's original water rate and the ALJ's recommended rate is a decrease in annual revenue of \$11,186.88.
72. The Commission rule at 30 TAC § 291.28(8) (the 51 Percent Rule) precludes Applicant from recovering rate case expenses associated with the water rate because a decrease of \$11,186.88 in annual revenue is less than \$20,499.31 (51 percent of the increase in revenue that would have been generated by Applicant's proposed rate.)
73. The annual revenue generated by Applicant's original sewer rate was \$195,120; by Applicant's proposed sewer rate is \$420,613.68; and by the ALJ's recommended sewer rate is \$331,053.60.
74. The increase in revenue from Applicant's original sewer rate to Applicant's proposed sewer rate is \$225,493.68, of which 51 percent is \$115,001.78.
75. The ALJ's recommended sewer rate revenue increase of \$135,933.60 is 69.67 percent of Applicant's proposed increase of \$225,493.68.

76. The 51 Percent Rule does not preclude Applicant from recovering rate case expenses associated with the sewer rate.
77. Applying the 51 Percent Rule, Applicant may recover nothing for rate case expenses attributable to water and \$14,698.62 for rate case expenses associated with sewer, resulting in a surcharge of \$1.13 per customer per month for 24 months.

#### Refund to Applicant's Customers for Rate Overcharges

78. Applicant has charged customers its proposed water and sewer rates since February 2008, after filing its Application in November 2007.
79. The ALJ's recommended rates are lower than Applicant's proposed water and sewer rates.
80. Applicant's customers are due a refund for the water and sewer rate overcharges in place since February 2008.
81. Due to the formula necessary for calculation of refunds; which considers overcharges based on the number of months Applicant's proposed rate was collected, the ALJ's proposed rates, a 0.61 percent interest rate; and a 24-month refund period, the amount of refund increases each month.
82. The Commission should adopt refunds for overcharges using the ED's calculations, based on the number of months Applicant's proposed rate has been charged; as of the date the final rates are adopted.

#### Miscellaneous

83. 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. The ALJ conducted a second remand hearing and issued a Supplement to the Amended PFD regarding Applicant's recovery of rate case expenses and the refund owed to Applicant's customers for water and sewer overcharges. TEX. GOV'T. CODE ANN. ch. 2003, TEX. WATER CODE ANN. ch. 13, and 30 TEX. ADMIN. CODE chs. 80 and 291.
10. Rate case expenses in the amount of \$14,698.62 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 \$1.13 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.
11. The following rates are appropriate to implement the Commission's rulings in this matter:

| <u>Water</u>                              |             | <u>Sewer</u>                              |          |
|---|-------------|---|----------|
| <u>Minimum Bill (including 0 gallons)</u> |             | <u>Minimum Bill (including 0 gallons)</u> |          |
| 5/8" x 3/4"                               | \$ 17.98    | 5/8" x 3/4"                               | \$ 50.90 |
| 1"  | \$ 44.95    | 1"  | \$ 50.90 |
| 1-1/2"                                    | \$ 89.90    | 1-1/2"                                    | \$ 50.90 |
| 2"  | \$143.84    | 2"  | \$ 50.90 |
| 3"  | \$ 269.71   | 3"  | \$ 50.90 |
| 4"  | \$ 449.51   | 4"  | \$ 50.90 |
| 6"  | \$ 899.02   | 6"  | \$ 50.90 |
| 8"  | \$ 1,438.43 | 8"  | \$ 50.90 |
| Gallage Rate                              |             | Gallage Rate                              |          |
| \$ 2.29 per each 1,000 gallons            |             | \$ 4.00 per each 1,000 gallons            |          |

12. The appropriate interest rate to be applied to overcharges collected by the Applicant during the pendency of this rate case is 0.61 percent. After accounting for interest at this rate, the total refunds due customers for overcharges is \$ \_\_\_\_\_ per month over 24

months for the water system and \$ \_\_\_\_\_ per month over 24 months 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 \$14,698.62, to be recovered as a monthly surcharge of \$1.13 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 \$14,698.62 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 phase 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

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Bryan W. Shaw, Ph.D., Chairman