State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

July 15, 2010

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

Re: **SOAH Docket No. 582-09-2068; TCEQ Docket No. 2008-1830-UCR; In Re: Application of Southern Water Corporation for a Water and Sewer Rate/Tariff Change in Harris County**

SOAH Docket No. 582-09-2069; TCEQ Docket No. 2008-1811-UCR; In Re: Appeal of Southern Water Corporation from a Water and Sewer Rate-Making Decision of the City of Houston; (Sewer CCN No. 20500; Water CCN No. 11389)

Dear Mr. Trobman:

Southern Water Corp (Southern) and the Executive Director (ED) filed exceptions to the Proposal for Decision (PFD) issued in this matter, and the ED filed a reply to Southern's exceptions. The City of Houston and the Office of Public Interest Counsel did not file exceptions. This letter is my response to the exceptions filed by Southern and the ED.

Southern's Exceptions: Southern filed exceptions concerning rate of return and refunds and surcharges. For rate of return, Southern reiterates its previous arguments that a presumptive 12% rate of return should be allowed rather than the rates of return recommended in the PFD of 9.25% for water service and 10.25% for sewer service. The recommended rates of return were based on the Rate of Return Worksheet utilized by the ED. For the reasons stated in the PFD and in the ED's reply to Southern's exceptions, I do not recommend any change to the proposed rates of return.

Southern also excepted to the portion of the Proposed Order that required Southern to refund any rates that have been collected in excess of the rates set in this proceeding. Southern pointed out that although the proposed rates have an effective date of August 1, 2008, Southern did not start charging its proposed rates at that time. I agree with these exceptions and have attached a revised proposed order to reflect this correction.

In its exceptions, Southern also requested the Commission to authorize it to collect a surcharge over a period of 24 months for the difference between the reduced rates it charged pursuant to City of Houston Ordinance 2008-970 and the rates approved in this proceeding. This issue was not addressed in the hearing of this case, so I make no recommendation on whether such a surcharge should be approved.

Southern's also proposed revisions to and additions of certain findings of fact, conclusions of law, and ordering paragraphs. The items mentioned by Southern concerning a refund and a surcharge were not discussed at the hearing or briefed. However, elimination of the refund order appears to be undisputed and I have made those changes. The other parties can respond accordingly if they are disputed. Southern's request to include a surcharge is disputed by the ED. I make no recommendation about whether a surcharge should be allowed and I have not added those items to the attached revised order. With this clarification, my responses are noted below:

1. Existing FOF 2: No objection to the proposed change.
2. New FOF 3: No objection to the proposed addition.
3. Existing FOF 8: No objection to the proposed change.
4. New FOF 10: No objection to the proposed addition.
5. New FOF 11: No objection to the proposed addition.
6. New FOF 12: No objection to the proposed addition.
7. New FOF 13: No objection to the proposed addition.
8. New FOF 15: No objection to the proposed addition.
9. New FOF 14: No objection to the proposed addition.
10. Existing FOF 15: No objection to the proposed change.
11. Existing FOF 51: No objection to the proposed change.
12. Existing FOF 88: Proposed change should be denied.
13. Existing FOF 89: Proposed change should be denied.
14. Existing FOF 95: No objection to the proposed change.
15. Existing FOF 96: The existing FOF should be deleted, but no recommendation is made concerning whether a surcharge should be allowed.
16. New FOF 97. No recommendation is made concerning whether a surcharge should be allowed.
17. Existing COL 12: The existing COL should be deleted, but no recommendation is made concerning whether a surcharge should be allowed.
18. Existing COL 13: No objection to deleting this COL.
19. Existing Order Provision 3: The existing Ordering Provision should be deleted, but no recommendation is made concerning whether it should be revised to allow a surcharge.
20. Existing Order Provision 4: The existing Ordering Provision should be deleted, but no recommendation is made concerning whether it should be revised to allow a surcharge.
21. Existing Order Provision 5: No objection to deleting this provision.

The attached proposed order reflects Southern's proposed changes to which I have no objection.

Executive Director's Exceptions: The ED filed exceptions concerning allocation of costs; exclusion of dental insurance as an allowable cost; the groundwater conservation fee paid by Southern; and refunds or surcharges.

Concerning allocation of general expenses between water service and sewer service, the ED requests that its 50/50 allocation methodology be used instead of the 37% water and 63% sewer allocation used by Southern and recommended in the PFD. I continue to believe that the 37/63 allocation methodology more accurately represents the relative costs between Southern's water and sewer service. However, as noted in the PFD, the allocation methodology used makes no practical difference in the customer's rates because more than 99 percent of all customers receive both water and sewer service. In addition, Southern has stated that either methodology is acceptable to it, although it believes its 37/63 allocation is more accurate. Therefore, I continue to believe that the 37/63 methodology is more accurate, but I have no objection to the Commission using the ED's proposed 50/50 methodology for the sake of convenience, as this is how the ED has calculated Southern's rates with the other adjustments from the PFD.

The ED's exception about the exclusion of dental insurance from recoverable costs should be denied because there was no evidence that this $1,740 excluded item is a reasonable and necessary expense.

For the reasons stated in the PFD, the ED's exceptions concerning the pass-thorough of the groundwater conservation fee should also be denied. The ED notes that under 30 TAC § 291.21(h)(3), any revision to a purchased water fee need not be part of a general rate case. However, in this rate case no revision to the pass-through item has been requested or recommended. Instead, the information has been included simply to show a complete picture of Southern's expenses and revenues. Further, no change in rates would occur in this proceeding by using either the ED's proposal or the recommendation of the PFD.

Regarding refunds, and as discussed above, I agree that the proposed findings and paragraphs ordering a refund should be deleted. The ED also states there is insufficient evidence to calculate a surcharge for any under-recovery by Southern. As noted previously, there was no discussion at the hearing or in briefing about an under-recovery or a surcharge, so I make no recommendation on that request by Southern.

Based on its exceptions, the ED made several proposed changes to findings of fact, conclusions of law, and ordering paragraphs. My responses are noted below.

1. Existing FOF 16, 17, and 18: These relate to using the 50/50 allocation methodology or the 37/63 methodology. As discussed above, I believe the 37/63 methodology is more accurate, but I do not object if the Commission chooses to use the 50/50 methodology. If the Commission elects to use the 50/50 methodology proposed by the ED, these FOF should be changed.

2. Existing FOF 19, 27, 45, 46, 52, 61, and 63 all relate to expense items that will need to be reallocated if the Commission adopts the ED's 50/50 allocation methodology. If the Commission adopts the 37/63 allocation methodology in the PFD, no changes are necessary to these FOF.
3. FOF 31, 32, 33, and 34 concern the infrastructure fee paid by Southern to the City of Houston. As discussed above, the ED's proposed changes to these FOF should be denied.
4. FOF 56, 58, and 60 relate to the ED's exception concerning dental insurance. For the reasons stated, the ED's proposed changes and addition to these FOF should be denied. However, if the Commission adopts the ED's 50/50 allocation methodology, the allocation of expenses in FOF 60 will need to be revised.
5. FOF 63 concerning depreciation expense should be revised to show the allocation of depreciation between water service and sewer service. The allocation will depend in part on whether the Commission adopts the 50/50 or the 37/63 allocation methodology.
6. FOF 64 and 65 should be revised as proposed by the ED to reflect the ED's calculations of taxes other than federal income taxes, although the allocation between water and sewer service will be partially affected by the methodology approved adopted by the Commission.
7. FOF 66 should be revised as proposed to show the ED's federal income tax calculation. **However, the ED should review this item because the sum of the amounts allocated by the ED to water and sewer service does not equal the total calculated federal income tax ($95,826 vs. $95,321).**
8. FOF 68 and 71 concern the infrastructure fee paid by Southern to the City of Houston. As discussed, the ED's proposed changes to these FOF should be denied.
9. FOF 95 and 96 concern refunds and should be deleted as proposed by the ED.
10. COL 12 and 13 concern refunds and should be deleted as proposed by the ED.
11. Ordering paragraphs 4 and 5 concern refunds and should be deleted as proposed by the ED.

I have attached a revised proposed order to reflect these changes where possible. I have left the amounts of allocated costs blank. These will depend on the allocation method approved by the Commission. Please let me know if I can provide any additional information.

Sincerely,

Thomas H. Walston
Administrative Law Judge

THW:nl
Enclosure
xc: Attached Service List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: SOUTHERN WATER CORP

SOAH DOCKET NUMBER: 582-09-2068

REFERRING AGENCY CASE: 2008-1830-UCR

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
ALJ THOMAS H. WALSTON

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

STYLE/CASE: **SOUTHERN WATER CORP**

SOAH DOCKET NUMBER: **582-09-2069**

REFERRING AGENCY CASE: **2008-1811-UCR**

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ADMINISTRATIVE LAW JUDGE
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Note: JOINED WITH SOAH DOCKET NO. 582-09-2068 (2008-1830-UCR)

xc: Docket Clerk, State Office of Administrative Hearings

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Approving the Application of Southern Water Corporation to Change Water and Sewer Rates and Granting the Appeal of Southern Water Corporation from a Water and Sewer Ratemaking Decision of the City of Houston TCEQ Docket Nos. 2008-1830-UCR and 2008-1811-UCR; SOAH Docket Nos. 582-09-2068 and 582-09-2069

On _____, the Texas Commission on Environmental Quality (Commission) considered the application of Southern Water Corporation for water and sewer rate/tariff changes and for recovery of rate case expenses through imposition of a surcharge on water and sewer customers and the appeal of Southern Water Corporation from a water and sewer ratemaking decision of the City of Houston. Administrative Law Judge (ALJ) Thomas H. Walston 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. Southern Water Corporation (Applicant) holds Water Certificate of Convenience and Necessity (CCN) No. 11389 and Sewer CCN No. 20500.

2. **[rev]** On May 29, 2008, Applicant submitted to the City of Houston (City) an application for

a water and sewer rate/tariff change for those portions of its certificated service area inside the City.

2.a. **[new]** On May 29, 2008, Applicant submitted to the Commission an application for a water and sewer rate/tariff change for those portions of its certificated area outside the City's corporate limits.

3. After a Notice of Deficiency issued by the Commission's Executive Director (ED), Applicant submitted on August 1, 2008, an Errata Application for water and sewer rate/tariff changes for CCN Nos. 11389 and 20500. The Errata Application used a test year of May 1, 2007, through April 30, 2008, and was the application considered in this proceeding.

4. On November 14, 2008, Applicant filed petitions with the TCEQ to appeal the water and sewer rate decisions by the City of Houston (City), which denied Applicant's rate increase requests.

5. On January 14, 2009, Applicant's Errata Application (2008-1811-UCR) and Applicant's petitions (2008-1830-UCR) were referred to SOAH for contested case hearings.

6. On April 7, 2009, Applicant's two proceedings were consolidated for one hearing and one PFD.

7. Applicant seeks a total revenue requirement of $1,289,852, including $472,437 for water service and $817,415 for sewer service.

8. **[rev]** There are two effective dates in this consolidated docket. The effective date of the proposed rates in the City appeal is August 1, 2008. The effective date of the proposed rates in the environs rate case is August 1, 2008.

9. Applicant timely provided notice of the proposed rate changes to its ratepayers and affected persons.

9.a. **[new]** The City suspended the effective date of the rate change application inside the City on July 1, 2008, in Ordinance No. 2008-616.

10. The ED protested Applicant's proposed rate increases for customers living outside the City.

10.a. **[new]** The Applicant did not implement its proposed rates on August 1, 2008, inside or outside the City.

10.b. **[new]** The City issued its final order on in-city rates on October 28, 2008, in Ordinance 2008-970. The effective date of the City's final rates was November 1, 2008.

10.c. **[new]** The Applicant's proposed rates were never charged in the City.

10.d. **[new]** The Applicant changed its old Commission-approved in-city rates to the rates approved by the City in Ordinance No. 2008-970 effective November 1, 2008.

10.e. **[new]** The Applicant chose not to charge the four environs customers rates different from those charged to in-city customers.

11. On April 7, 2009, a preliminary hearing convened, jurisdiction was established, and the following parties were designated: Applicant; the ED; the Office of Public Interest Counsel (OPIC); and the City of Houston.

12. A hearing on the merits of the Application was held on January 6, 2010, at the SOAH hearing facilities in Houston, Texas. Applicant appeared through its attorney, Mark H. Zeppa; the ED appeared through Brian MacLeod, staff attorney; OPIC appeared through Scott Humphrey, staff attorney; and the City appeared through attorneys Alton J Hall and Tammy Wavle-Shea. The hearing resumed telephonically on February 8, 2010, with all parties participating.

13. The record closed on March 22, 2010, after the parties filed replies to written closing arguments.

14. During the test year, Applicant provided water and sewer service to 1,256 customers. Four customers reside outside the Houston City limits and two of these are sewer only customers. The remaining 1,252 customers are inside the City and are both water and sewer customers.

15. **[rev]** Applicant requested the following rates:

Water		**Sewer**	
Minimum Bill		Minimum Bill	
(including 2,000 gallons)		(including 2,000 gallons)	
5/8" x 3/4"	$16.58	5/8" x 3/4"	$33.95
3/4"	$23.28	3/4"	$33.95
1"	$36.66	1"	$33.95
1 1/2"	$70.12	1 ½"	$33.95
2"	$110.27	2"	$33.95
3"	$203.95	3"	$33.95
Gallonage Rate		Gallonage Rate	
$1.60 for each 1,000 gallons		$2.75 for each 1,000 gallons	
over the 2,000 gallon minimum		over the 2,000 gallon minimum	

Expense Allocation Between Water and Sewer Service

16. The value of the depreciable assets used for sewer service is significantly greater than those used for water service. **[see ALJ's response to exceptions]**

17. The allowable expenses attributable directly to sewer service are significantly greater than those directly attributable to water service. **[see ALJ's response to exceptions]**

18. Allocation of overhead, general costs, and common assets 37% to water and 63% to sewer is reasonable and should be utilized in calculating Applicant's rates. **[see ALJ's response to exceptions]**

Salaries and Wages

19. Applicant's reasonable and necessary salary and wage expenses are $293,688 for providing water and sewer service, allocated $108,665 to water and $185,023 to sewer. **[see ALJ's response to exceptions concerning allocation method]**

20. Applicant's salaries and wages are based only on historic salary and wage costs incurred during the test year.

21. One employee position for Applicant was vacant during the test year for about four months.

22. Applicant incurred contract labor expense during the test year for meter reading and to help pull a lift station and for similar work.

23. Applicant's staffing levels were reasonable for a water and sewer utility with over 1,250 customers.

Contract Labor Expenses

24. During the test year, Applicant incurred $4,400 in contract labor.

25. Applicant incurred contract labor costs of $4,000 to help pull a lift station and for similar work.

26. Applicant incurred contract labor costs of $400 for meter reading.

27. Applicant's contract labor expenses incurred during the test year were reasonable and necessary and should be allocated $1,628 to water service and $2,772 to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Purchased Water Expense

28. Applicant is located within the Harris-Galveston Subsidence District (District) and is under orders to convert from groundwater to surface water.

29. Because no surface water is available to Applicant, the District allows it to join an alternate program sponsored by the City of Houston, which is constructing infrastructure necessary to provide surface water.

30. Until the infrastructure is completed, Applicant pays the City a fee per 1,000 gallons pumped to help offset the infrastructure costs.

31. This expense totaled $65,353 for the test year, allocated entirely to water service.

32. The purchased water expense is reasonable and necessary for Applicant to provide service.

33. The charges paid by Applicant to the City are collected from customers in the exact amount.

34. The purchased water expense is entirely offset in Applicant's rate calculations through a deduction for other revenues received from customers.

Chemical Expenses

35. Applicant incurred a sludge expense of $28,046 directly assigned to sewer service.

36. Applicant incurred laboratory fees of $912 directly assigned to water service.

37. Applicant incurred unassigned chemical expenses of $20,267 that should be assigned 37% to water service and 63% to sewer service.

38. Applicant's total chemical expense of $49,225 is reasonable and necessary and should be allocated $40,854 to sewer service and $8,411 to water service.

Utilities

39. Applicant's test-year expenses for utilities were $42,549 for water and $73,813 for sewer, for a total of $116,362.

40. Applicant's utility expense is almost exclusively for electricity.

41. Applicant purchases electricity from a retail electric provider in a deregulated market.

42. Applicant changed to a new retail electric power provider after the test year, and its utility charges have dropped by more than two cents per kilowatt hour.

43. Under its new rates, Applicant's annual electricity costs would be $15,727 lower than the test year.

44. Applicant's reduced electricity rates are a known and measureable change.

45. Total utility expense $100,635, allocated $36,730 for water service and $63,905 for sewer

service, are reasonable and necessary. **[see ALJ's response to exceptions concerning allocation method]**

Repair, Maintenance, and Supply Expenses

46. Applicant's reasonable and necessary annual repair, maintenance, and supply expense total $7,604, allocated $2,813 to water service and $4,791 to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Office Expenses

47. Applicant claimed total test-year office expenses of $26,854, allocated $9,819 to water service and $17,035 to sewer service.

48. Applicant's claimed total office expense should be reduced by the following items: a payment to Stephen Rachac of $2,590 due to lack of appropriate documentation; $400 reclassified to contract labor; $1,200 reclassified to salaries and wages; $125 for flowers; and $2,545 for a payment to office manager Doyle without supporting explanatory information.

49. Applicant's reasonable and necessary annual office expenses total $19,994, allocated $7,398 to water service and $12,596 to sewer service.

Accounting and Legal Expenses

50. Applicant claimed total test-year accounting and legal expenses of $39,926, allocated $14,599 to water service and $25,327 to sewer service.

51. **[rev]** Applicant's claimed total accounting and legal expense should be reduced by the following items: $17,987 professional fees also booked as rate case expenses; $40 payment for a fine; $100 payment to a church; $1,101 non-recurring payment to the Houston Chronicle; $912 reclassified to chemicals (laboratory fee); and $898 in fees concerning a federal income tax return for a trust.

52. Applicant's reasonable and necessary annual accounting and legal expenses total $18,888, allocated $6,989 to water service and $11,899 to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Insurance Expenses

53. Applicant claimed total test-year insurance expenses of $136,412, allocated $49,880 to water service and $86,532 to sewer service.

54. Applicant's total insurance expense included $91,351 in heath insurance expenses and $45,061 in commercial insurance.

55. Applicant health insurance expense included health and dental insurance for Applicant's employees and family members and life insurance for certain employees.

56. Only $56,308 of Applicant's health insurance expense for employees is reasonable and necessary.

57. Applicant's health insurance expense of $33,772 for employee family members is not a reasonable and necessary expense of service.

58. Applicant's $3,604.25 dental insurance expense for employees and for employee family members is not a reasonable and necessary expense of service.

59. Applicant's $667.39 life insurance expense for certain employees is not a reasonable and necessary expense of service.

60. Applicant's reasonable and necessary annual insurance expenses total $98,369, allocated $36,397 to water service and $61,972 to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Miscellaneous Expenses

61. Applicant's reasonable and necessary annual miscellaneous expenses total $22,967, allocated $8,498 to water service and $14,469 to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Depreciation Expense

62. Applicant claimed total test-year depreciation expense of $111,268, allocated $46,859 to water plant and $64,409 to sewer service.

63. After correcting Applicant's depreciation expense by removing one well that has been plugged and is not used or useful and by renaming some assets, combining assets, and moving some assets from the water schedule to the sewer schedule, Applicant's reasonable and necessary annual depreciation expense totals $122,425, allocated $_____ to water service and $_____ to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Taxes Other than Federal Income Taxes

64. **[rev]** Applicant's reasonable and necessary taxes other than federal income taxes total $63,622, allocated $_____ to water service and $_____ to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

65. **[delete]**

Federal Income Taxes

66. Applicant's reasonable and necessary annual federal income taxes total $95,351, allocated $_____ to water service and $_____ to sewer service. **[see ALJ's response to exceptions concerning allocation method]**

Other Revenues

67. Applicant's Errata Application included other revenue, which reduces the revenue requirement, of $66,625 for water service and $7,165 for sewer service, for total other revenue of $73,790.

68. To completely offset Applicant's purchased water expenses, its other revenue should be increased by $5,893.

69. Applicant's other revenue should be increased by $7,200 in rental payments, allocated $2,633 to water and $4,567 to sewer.

70. Applicant's other revenue should be increased by the $5,265 balance of all penalties, escrow interest, and reconnection and transfers not allocated to the water system. This increase should be allocated to sewer service.

71. Applicant's annual other revenues total $92,148, allocated $75,150 to water service and $16,998 to sewer service.

Net Invested Capital (Rate Base)

72. In its Errata Application, Applicant requested a rate base totaling $2,580,169, allocated $962,485 to water service and $1,617,684 to sewer service. Applicant's total requested rate base included $2,483,519 in plant net book value and a $96,650 working cash allowance.

73. Applicant's total plant net book value should be reduced by $111,268 to reflect net book value as of April 30, 2008, rather than April 30, 2007.

74. Applicant's total net plant book value should be reduced by $25,075 for corrections for the removal of one well that has been plugged and is not used or useful.

75. Applicant should be authorized a working cash allowance equal to 1/8th of its operations and maintenance (O&M) expense authorized by this order.

76. Applicant's should be allowed a working cash allowance of $_____ for water service to reflect the reductions to its O&M expense approved in this order.

77. Applicant's should be allowed a working cash allowance of $_____ for sewer service to reflect the reductions to its O&M expense approved in this order.

78. Applicant's total rate base should be reduced by $57,173 for customer deposits.

79. Good cause was not established to reduce Applicant's rate base for Accumulated Deferred Federal Income Taxes.

80. Applicant's total reasonable net invested capital is $_____, allocated $_____ to water service and $_____ to sewer service.

Rate of Return

81. Applicant has a capital structure of 100% equity and 0% long-term debt.

82. When Applicant filed its Errata Application, the then current Baa public utility bond average was 7.25%

83. Concerning water service, at the time of the Errata Application, Applicant had no major deficiencies in the most recent PWS inspection report; no then current or prior enforcement actions within the previous three years; and Applicant made good faith efforts to solve current problems.

84. Concerning its water service, at the time of the Errata Application, Applicant had a drought contingency plan; a conservation plan; a program to educate its customers about the nature of the system, its production and distribution ability, PWS standards, and the need for water conservation; and a successful program to reduce unaccounted for water losses.

85. Concerning its sewer service, at the time of its Errata Application, Applicant had a stand alone sewer system with no agreement with a water supplier for either billing and collection or for discontinuance for nonpayment.

86. Concerning its sewer service, at the time of its Errata Application, Applicant had no major deficiencies in the most recent PWS inspection report; no then current or prior enforcement actions within the previous three years; and Applicant made good faith efforts to solve current problems.

87. Concerning its sewer service, at the time of its Errata Application, Applicant had well-maintained, up-to-date books and records; effective communications and good customer relations; and it consistently and timely met reporting requirements and payment of fees.

88. A fair rate of return for Applicant to receive on its water-service rate base is 9.25%.

89. A fair rate of return for Applicant to receive on its sewer-service rate base is 10.25%.

Rate Design

90. Applicant's current rate design includes 2,000 gallons in the base rate for water and sewer service.

91. Applicant's system-wide water loss was 13.97%.

92. A preponderance of the evidence did not support an adjustment to rates based on weather normalization.

Rate Case Expenses

93. Applicant incurred reasonable and necessary rate case expenses in this matter in the amount of $51,579.36 for preparation of the Errata Application, including deriving the original plant and equipment costs, developing the proposed rate/tariff changes, filing fees, costs of notice, and participation by experts and counsel in the contested case hearing.

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

Refunds/Surcharge

95. **[rev]** Because of the City's Ordinances Nos. 2008-616 and 2008-970, Applicant has received an under-recovery of rates (underpayment by customers) while this rate case and appeal were pending. **[The ED requests that this FOF be deleted]**

96. **[deleted]** [No recommendation is made on whether a surcharge should be allowed.]

Miscellaneous

97. 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 Texas Commission on Environmental Quality has jurisdiction to consider an appeal by a public utility of a rate decision by the governing body of a municipality, pursuant to TEX. WATER CODE ANN. § 13.043.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. Rate case expenses in the amount of $51,579.36 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.

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

Water

Minimum Bill (including 0 gallons)

5/8" x ¾"	$ _____
1"	$ _____
1-1/2"	$ _____
2"	$ _____
3"	$ _____

Sewer

Minimum Bill (including 0 gallons)

5/8" x ¾"	$ _____
1"	$ _____
1-1/2"	$ _____
2"	$ _____
3"	$ _____

Gallonage Rate	Gallonage Rate
$ _____ per each 1,000 gallons	$ _____ per each 1,000 gallons

12. **[deleted]** [No recommendation is made on whether a surcharge should be allowed.]

13. **[deleted]**

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

1. Southern Water Corporation's Errata Application for water and sewer rate/tariff changes and its appeal from a water and sewer rate making decision of the City of Houston are granted as modified by, and to the extent set forth in, the Findings of Fact and Conclusions of Law.

2. The request of Southern Water Corporation to apply a surcharge to recover rate case expenses in the amount of $51,579.36, 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 $51,579.36 is recovered.

3. Southern Water Corporation shall submit a semi-annual report to the TECQ, Water Supply Division, beginning six months after the date of this order, showing the total surcharge collected and the remaining balance.

4. **[deleted]** [No recommendation is made on whether a surcharge should be allowed.]

5. **[deleted]**

6. Southern Water Corporation shall file a tariff reflecting the rates approved by the Commission within 10 days of the date of this Order.

7. Southern Water Corporation 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.

8. 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.

9. 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.

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

11. 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

_____

Bryan W. Shaw, Ph.D., Chairman