Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

August 15, 2011

Melissa Chao
Texas Commission on Environmental Quality
Office of the Chief Clerk
MC-105, P.O. Box 13087
Austin, Texas 78711-3087

Re: Water Rate/Tariff Change Application of Wiedenfeld Water Works, Inc., Certificate of Convenience and Necessity No. 12052, in Kerr, Kendall, and Medina Counties, Application No. 36172-R; SOAH Docket No. 582-09-3549; TCEQ Docket No. 2009-0372-UCR

Dear Ms. Chao:

I have enclosed the Executive Director's Exceptions to the Proposal for Decision on Remand. Please let me know if you have any questions.

Sincerely,

Stefanie Skogen

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing list

SOAH DOCKET NO. 582-09-3549
TCEQ DOCKET NO. 2009-0372-UCR

WATER RATE/TARIFF CHANGE APPLICATION OF WIEDENFELD WATER WORKS, INC., CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 12052, IN KERR, KENDALL, AND MEDINA COUNTIES, TEXAS, APPLICATION NO. 36172-R	§ § § § § § § § §	**BEFORE THE TEXAS** **COMMISSION ON** **ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PROPOSAL FOR DECISION ON REMAND

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission), by and through a representative of the TCEQ's Environmental Law Division, does not have any exceptions to the Administrative Law Judge's (ALJ's) proposal for decision (PFD) on remand. However, the ED does have several suggested corrections for the proposed order:

A. Order title

The ED recommends removing the word "Utilities" to avoid confusion regarding Wiedenfeld Water Works, Inc.'s (Wiedenfeld's) name.

B. Finding of Fact No. 99

Wiedenfeld stopped charging its proposed rates in September 2010. Therefore, the ED recommends changing "present" to "September 19, 2010."

C. Ordering Provision No. 2

Because Wiedenfeld has already stopped charging its proposed rates, this provision could be deleted.

D. Ordering Provision No. 3

As stated above, Wiedenfeld stopped charging its proposed rates in September

2010. Therefore, the ED recommends changing "the present" to "September 19, 2010."

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division

Stefanie Skogen

By:_____

Stefanie Skogen
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24046858
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0575
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I certify that on August 15, 2011, a copy of the foregoing document was sent by first class mail, agency mail, electronic mail, and/or facsimile to the persons on the attached mailing list.

Stefanie Skogen

Stefanie Skogen, Staff Attorney
Environmental Law Division

Mailing List
Wiedenfeld Water Works, Inc.
SOAH Docket No. 582-09-3549
TCEQ Docket No. 2009-0372-UCR

STATE OFFICE OF ADMINISTRATIVE HEARINGS:
The Honorable Lilo D. Pomerleau
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
Phone: (512) 475-4993
Fax: (512) 322-2061

REPRESENTING WIEDENFELD WATER WORKS, INC.:
Mark H. Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road Suite 202
Austin, Texas 78759-8435
Phone: (512) 346-4011
Fax: (512) 346-6847

REPRESENTING THE WESTWOOD PARK RATEPAYERS:
Randall B. Wilburn
Attorney at Law
3000 South IH-35 Suite 150
Austin, Texas 78704
Phone: (512) 326-3200
Fax: (512) 326-8228

REPRESENTING THE OFFICE OF PUBLIC INTEREST COUNSEL:
James Murphy
Texas Commission on Environmental Quality
Office of Public Interest Counsel
MC-103, P. O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6623
Fax: (512) 239-6377

OFFICE OF THE CHIEF CLERK:
Melissa Chao
Texas Commission on Environmental Quality
Office of the Chief Clerk
MC-105, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Fax: (512) 239-3311

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 21, 2010

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Re: Water Rate/Tariff Change Application of Wiedenfeld Water Works, Inc., Certificate of Convenience and Necessity No. 12052, in Kerr, Kendall, and Medina Counties; Application No. 36172-R; SOAH Docket No. 582-09-3549; TCEQ Docket No. 2009-0372-UCR

Dear Ms. Castañuela:

I have enclosed the Executive Director's Exceptions to the Proposal for Decision. Please let me know if you have any questions.

Sincerely,

Stefanie Skogen

Stefanie Skogen
Staff Attorney
Environmental Law Division

Enclosure

cc: Mailing list

SOAH Docket No. 582-09-3549
TCEQ Docket No. 2009-0372-UCR

WATER RATE/TARIFF CHANGE APPLICATION OF WIEDENFELD WATER WORKS, INC., CERTIFICATE OF CONVENIENCE AND NECESSITY NO. 12052, IN KERR, KENDALL, AND MEDINA COUNTIES, TEXAS, APPLICATION NO. 36172-R	§ § § § § § § §	**BEFORE THE STATE OFFICE** **OF** **ADMINISTRATIVE HEARINGS**

EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE PROPOSAL FOR DECISION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission), by and through a representative of the Commission's Environmental Law Division, files the following exceptions to the Administrative Law Judge's (ALJ's) proposal for decision (PFD). In support of his exceptions, the ED shows the following:

I. OVERVIEW

The ED fully supports the ALJ's conclusions that Wiedenfeld Water Works, Inc.'s (Wiedenfeld's) application for a water rate/tariff change should be denied, that refunds should be issued to Wiedenfeld's water customers for the period during which the proposed rates were collected, and that Wiedenfeld should be assessed the transcription costs. However, the ED's position differs from that of the ALJ regarding several of the findings of fact found in the proposed order, and he provides the following exceptions to those items. The ED is also providing several corrections to the proposed order.

II. EXCEPTIONS

A. Finding of Fact Nos. 55-57

Wiedenfeld has taken the position that $8,164 in lab fees should be added to its

repairs, maintenance, and supplies expenses.[1] The ALJ has supported the addition of these fees because "[a] subheading in the general ledger is titled 'Lab Fees' with a list of dates, name, and amounts."[2] The ED opposes adding these fees. He has repeatedly taken the position in contested rate cases that a general ledger entry alone is not sufficient supporting documentation for costs and expenses. As the ED stated in his closing argument,

> While a general ledger is a useful business tool and provides the agency with a list of the utility's expenses and assets, the ledger must be supported by verifiable proof, such as invoices and receipts, which show what each item is, how much it cost, who paid for it, and whether it is an expense or an asset. When a utility does not provide such support, the TCEQ may disallow the unsupported costs and expenses.[3] The ED has no choice other than to recommend that the rates be set based on the costs and expenses that could be verified. To do otherwise would potentially subject a utility's customers to pay for costs and expenses that should not have been passed on to them."[4]

The ED did not include these expenses in his calculations because he did not receive sufficient supporting documentation for them.[5] If the ED had received such documentation, he would have added the expenses into his calculations even though they were not included in the application. The ED took this same approach throughout the case, cutting costs and expenses that were unsupported and adding expenses that

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[1] Applicant's Closing Argument 13 (June 29, 2010); Transcript of Hearing 175:15-18 (May 5, 2010).
[2] PFD 21 (Oct. 1, 2010).
[3] 30 TEX. ADMIN. CODE § 291.28(4) (West 2010).
[4] ED's Closing Argument 2 (June 29, 2010).
[5] Transcript of Hearing 369:8-13 (May 6, 2010); ED's Closing Argument 15 (June 29, 2010); ED's Reply to Closing Arguments 5 (Aug. 6, 2010).

were not in the original application but for which ED staff received supporting documentation.[6] Because Wiedenfeld did not provide sufficient supporting documentation for the lab fees, they should not include in the revenue requirement. Therefore, the ED recommends removing Finding of Fact Nos. 55 and 56 and amending Finding of Fact No. 57 so the amount listed is $49,043, the ED's calculated total,[7] rather than $57,068.

III. CORRECTIONS

The following discussions address various parts of the proposed order which need to be corrected due to factual errors.

A. First paragraph and Finding of Fact No. 2

Wiedenfeld currently has four tariffs:[8] one each for Oak Ridge Estates, Westwood, and Windwood Oaks and one for the remaining systems. Therefore, the word "tariff" on the third line of the first paragraph of the order should be plural, and the first sentence of Finding of Fact No. 2 should say "four tariffs" instead of "three tariffs."

B. Finding of Fact No. 27

For the first set of rates listed in this finding, Vista Hills should not be listed, as it is not affected by this rate change.[9] Heritage Park and Cedar Springs should be added to the list, as they are affected by the rate change.[10]

C. Finding of Fact No. 35

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[6] *E.g.*, ED's Closing Argument 15 (June 29, 2010) (describing how staff cut $12,357 in unsupported expenses but added $1,910 for vehicle expenses that were not included in the application).
[7] Ex. ED-1, at 10:15-16, att. LG-6.
[8] Transcript of Hearing 69:8-10 (May 5, 2010).
[9] Ex. ED-A 22.
[10] Ex. ED-A 22.

Wiedenfeld calculated a revenue requirement of $481,169 in its application.[11] That number should replace the $453,912 found in the second sentence of this finding.[12]

D. Finding of Fact No. 50

The ED subtracted $950 for utility expenses attributable to the Vista Hills system.[13] That number should replace the $885 found in this finding.

E. Finding of Fact Nos. 55 and 56

If the Commission chooses to not delete these findings, the dollar amount listed should be $8,164 rather than $8,025.[14]

F. Finding of Fact No. 72

The amount should be $1,191, not $1,291.[15]

G. Finding of Fact Nos. 84 and 85

The words "weighted average" should appear in front of "rate of return" in both findings, as these findings discuss Wiedenfeld's calculated weighted average ROR, not its ROR, which was 10%.[16]

H. Finding of Fact No. 91

The amount for the weighted average ROR should be 8.41%, not 8.415%.[17]

I. Conclusion of Law No. 38

The rule listed should be section 80.23(d)(1), not 80.24(d)(1).

IV. ADDITIONAL RECOMMENDATIONS

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[11] Ex. ED-1 att. LG-1, at 14.
[12] Wiedenfeld did list $453,912 as the revenue requirement in Table X.A of the application. Ex. ED-1 att. LG-1, at 18. However, the ED is unsure where that number came from; it may just be the amount of revenue Wiedenfeld believed its proposed rates would generate.
[13] The ED subtracted $885 for electricity and $65 for telephone and trash, which totals $950. Ex. ED-1, at 9:21-10:1, att. LG-6.
[14] Ex. ED-1 att. LG-12, at 87.
[15] Ex. ED-1 att. LG-1, at 14.
[16] Ex. ED-1 att. LG-1, at 12.
[17] The non-rounded amount was 8.4104%. Ex. ED-1 att. LG-4.

Finding of Fact No. 13 is correct as stated. However, it does not discuss the fact that the ED ordered Wiedenfeld to retract the additional statement and that Wiedenfeld mailed the retraction to its customers on July 15, 2009.[18] Therefore, the ED recommends adding the following language at the end of this finding: The ED ordered Wiedenfeld to retract the additional statement. Wiedenfeld mailed the retraction to its customers on July 15, 2009.

If the Commission chooses to grant Wiedenfeld's requested conservation rates and miscellaneous fees, the ED believes language to that effect needs to be added to Ordering Provision No. 1 so it is part of what the Commission is actually ordering in this case. Therefore, the ED recommends adding the following language: Wiedenfeld's requested conservation rates for all twelve systems are approved. Wiedenfeld's requested tariff charge increases for its tap fee, reconnection fee (customer's request), transfer fee, and returned check charge for all twelve systems are also approved.

In Ordering Provision No. 3, the ALJ left the length of the refund period blank. The ED recommends that the Commission order Wiedenfeld to administer refunds over the number of months the amounts to be refunded were charge. As the length of time those amounts were collected for, it is appropriate to require that the over-collected amounts be refunded for the same time period. The ED has consistently recommended this method of determining the refund period in past rate cases, and the Commission has adopted this recommendation. The ED requests that the Commission adopt this methodology in this case as well.

V. CONCLUSION

While the ED appreciates and fully supports the ALJ's recommendation that the

[18] Ex. ED-E.

Commission deny Wiedenfeld's water rate application and order Wiedenfeld to issue refunds to its customers, the ED has concerns regarding some of the findings found in the proposed order and what their impact could be on future rate cases, not to mention the case at hand. Therefore, the ED respectfully requests that the Commission adopt the ALJ's proposed order with the ED's recommended changes presented herein.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division

By: Stefanie Skogen
Stefanie Skogen
Staff Attorney
Environmental Law Division
State Bar of Texas No. 24046858
MC-173, P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-0575
Fax: (512) 239-0606

CERTIFICATE OF SERVICE

I certify that on October 21, 2010, a copy of the foregoing document was sent by first class mail, agency mail, electronic mail, and/or facsimile to the persons on the attached mailing list.

Stefanie Skogen, Staff Attorney
Environmental Law Division

Mailing List
Wiedenfeld Water Works, Inc.
SOAH Docket No. 582-09-3549
TCEQ Docket No. 2009-0372-UCR

STATE OFFICE OF ADMINISTRATIVE HEARINGS:
The Honorable Lilo D. Pomerleau
State Office of Administrative Hearings
P.O. Box 13025
Austin, Texas 78711-3025
Phone: (512) 475-4993
Fax: (512) 475-4994

REPRESENTING WIEDENFELD WATER WORKS, INC.:
Mark H. Zeppa
Law Offices of Mark H. Zeppa, P.C.
4833 Spicewood Springs Road, Suite 202
Austin, Texas 78759-8435
Phone: (512) 346-4011
Fax: (512) 346-6847

REPRESENTING THE WESTWOOD PARK RATEPAYERS:
Randall B. Wilburn
Attorney at Law
3000 South IH-35, Suite 150
Austin, Texas 78704
Phone: (512) 326-3200
Fax: (512) 326-8228

REPRESENTING THE OFFICE OF PUBLIC INTEREST COUNSEL:
James Murphy
Texas Commission on Environmental Quality
Office of Public Interest Counsel, MC-103
P. O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-6623
Fax: (512) 239-6377

OFFICE OF THE CHIEF CLERK:
LaDonna Castañuela
Texas Commission on Environmental Quality
Office of the Chief Clerk, MC-105
P.O. Box 13087
Austin, Texas 78711-3087
Phone: (512) 239-3300
Fax: (512) 239-3311