State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

July 26, 2011

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

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

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 Proposal for Decision on Remand and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **August 15, 2011**. Any replies to exceptions or briefs must be filed in the same manner no later than **August 25, 2011**.

This matter has been designated **TCEQ Docket No. 2009-0372-UCR ; SOAH Docket No. 582-09-3549**. 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,

Lilo D. Pomerleau
Administrative Law Judge

LDP:nl
Enclosures
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STYLE/CASE: **WIEDENFELD WATER WORKS INC**

SOAH DOCKET NUMBER: **582-09-3549**

REFERRING AGENCY CASE: **2009-0372-UCR**

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

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

PROPOSAL FOR DECISION ON REMAND

I. INTRODUCTION

Wiedenfeld Water Works, Inc. (WWW or Applicant) has filed an application to increase the rates for its retail water utility service. WWW operates 13 water systems. It seeks to consolidate and change the rates for 12 of its systems: Cedar Springs, Center Point, Heritage Park, Hills n' Dales, Oak Ridge Estates, Platten Creek, Rocky Creek, Southern Hills, Verde Park, Westwood Park, Windwood Oaks, and Woodhaven MHP. WWW does not seek a rate change for Vista Hills.

After considering the Administrative Law Judge's (ALJ) Proposal for Decision (PFD) and recommended Order, the Commissioners of the Texas Commission on Environmental Quality (Commission) remanded this case back to the State Office of Administrative Hearings (SOAH) to recalculate and report the revenue requirement and resulting rate design proven by the Applicant, whether the proven rates are higher or lower than existing rates, and what are the total refund amounts due to the customers to cover over-charges plus 0.28% interest.

The Executive Director (ED) calculated the rate request numbers based on the Commission's order and determined that the numbers do not support a rate increase. Applicant concurs with the ED's calculation, and no party has objected to the refund amounts.

II. PROCEDURAL HISTORY

At its January 26, 2011 open meeting, the Commission considered the PFD, record evidence, the parties' exceptions and replies, the ALJ's reply and final recommendation, and the

oral arguments. On February 8, 2011, the Commission issued an Interim Order, remanding this matter to SOAH and ordering the ALJ and the parties to recalculate and report the revenue requirement and rate design based on:

(1) a finding that the Applicant satisfied the consolidated tariff criteria;

(2) the ALJ's recommended allowable expenses plus a labor expense of $11,927 for four temporary employees and a repair and maintenance expense of $8,164 for lab fees;

(3) making other changes to any other revenue requirement category that would be affected by these changes, including federal income tax expenses and working cash allowance;

(4) using the ALJ's recommended rate base and the 8.41% weighted average rate of return; and

(5) using the ED's proposed fixed and variable cost percentages, gallons billed, and connection count for the rate design.

The ALJ convened a telephonic post-hearing conference on March 17, 2011. All parties entered an appearance. The Applicant stated that the ED had calculated the numbers based on the Commission's Interim Order, and those numbers did not support a rate increase. Accordingly, the Applicant indicated that the parties wished to discuss the amount of the refund and appropriate rate design.

On May 2, 2011, the Protestants requested that the case be abated for an additional 30 days to allow time to review the calculations. No party objected to this request. On June 15, 2011, the ED filed a status report indicating that the Protestants still had not reviewed the calculations. The ED also filed proposed findings of fact and conclusions of law.

Remand Order No. 5, issued June 23, 2011, set a deadline of July 8, 2011, for all parties to review the calculations and file objections, if any. No party objected to the calculation or the ED's proposed findings of fact and conclusions of law.

Appropriately, the ED's proposed findings did not address the issue of consolidating the 12 systems under one tariff. The evidence does not support a rate increase; therefore, the issue of consolidation is moot. In consideration of the Commission's Interim Order, the ALJ amended and deleted findings of fact and conclusions of law that addressed the appropriateness of Applicant's request for consolidation. The ALJ also adopted the ED's proposed findings of fact and conclusions of law in the attached proposed order, which represents complete findings of fact and conclusions of law.

SIGNED July 26, 2011.

LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER
DENYING THE APPLICATION OF WIEDENFELD WATER WORKS, INC.
UTILITIES TO INCREASE ITS RATES
SOAH DOCKET NO. 582-09-3549
TCEQ DOCKET NO. 2009-0372-UCR

On _____, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the application of Wiedenfeld Water Works, Inc. (WWW) to change its water rates and its tariffs in Kerr, Kendall, and Medina Counties, Texas, under Certificate of Convenience and Necessity No. 12052. A Proposal for Decision on Remand (PFD) was presented by Lilo D. Pomerleau, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following amended Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

Procedural History and Jurisdiction

1. WWW provides retail water utility service under Certificate of Convenience and Necessity No. 12052, in Kerr, Kendall, and Medina Counties, Texas.
2. WWW operates 13 water systems, 12 of which are the subject of this application, under four tariffs. The 12 systems are Cedar Springs, Center Point, Heritage Park, Hills n'

Dales, Oak Ridge Estates, Platten Creek, Rocky Creek, Southern Hills, Verde Park, Westwood Park, Windwood Oakes, and Woodhaven.

3. The WWW system that is not part of this application is Vista Hills.

4. On September 10, 2008, notices of the proposed rate change were mailed to WWW's customers other than those at the Windwood Oaks and Oak Ridge Estates water systems.

5. On September 30, 2008, notices of the proposed rate change were mailed to WWW's customers on the Windwood Oaks and Oak Ridge Estates water system.

6. On September 12, 2008, WWW filed its application to increase its water rates and amend its tariffs.

7. The effective date of the increase was December 20, 2008.

8. More than ten percent of WWW's customers filed protests by the applicable deadline.

9. On March 27, 2009, the Commission's Chief Clerk referred the application to SOAH for hearing.

10. On June 11, 2009, the Chief Clerk mailed notice of a preliminary hearing to WWW.

11. WWW mailed the notice of the preliminary hearing to its customers on June 19, 2009.

12. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

13. The notice contained an additional, unauthorized statement, which may have discouraged ratepayers from attending the preliminary hearing. The ED ordered WWW to retract the additional statement. WWW mailed the retraction to its customers on July 15, 2009.

14. On July 21, 2009, an ALJ held the preliminary hearing as indicated in the notice. The following attended and were admitted as parties:

PARTY	REPRESENTATIVES
WWW	R. Charles Wiedenfeld
ED	Stephanie Skogen, James T. Aldredge
Office of Public Interest Counsel (OPIC)	Blas J. Coy, Jr.
Windwood Oaks	Steve and Deanna Caraway
Heritage Park	Bill Wilson
Westwood Park ratepayers (Westwood)	Santos Hernandez; Hanson Paul Leblanc, III

15. The ALJ ordered that a second preliminary hearing be convened in case any ratepayer was discouraged from attending the first preliminary hearing.

16. On July 29, 2009, the Chief Clerk mailed notice of a second preliminary hearing to WWW.

17. WWW mailed the notice of the second preliminary hearing to its customers on August 3, 2009.

18. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

19. On August 26, 2009, an ALJ held a second preliminary hearing as indicated in the notice.

20. Subsequent to the preliminary hearings and before the hearing on the merits, Windwood Oaks reached a settlement with WWW and withdrew as a party.

21. Subsequent to the preliminary hearings and before the hearing on the merits, Heritage Park withdrew as a party.

22. No party disputes either the Commission's or SOAH's jurisdiction.

23. The ALJ held the hearing on the merits of the application on May 5-6, 2010, and the following parties attended:

PARTY	REPRESENTATIVES
WWW	Mark H. Zeppa; Mary Alice Boehm-McKaughan
ED	Stephanie Skogen, James T. Aldredge
OPIC	James B. Murphy
Westwood	Randall B. Wilburn

24. The record closed August 6, 2010, with the filing of reply briefs.

Overview of the Proposed Rate Increase

25. At the end of the 2007 test year, on December 31, 2007, the 12 water systems combined had approximately 753 metered connections.

26. One tariff applies to nine water systems—Cedar Springs, Center Point, Heritage Park, Hills n' Dales, Platten Creek, Rocky Creek, Southern Hills, Verde Park and Woodhaven MHP. Westwood Park, Windwood Oaks, and Oak Ridge estates each have different tariffs.

27. WWW requested to change its rates as follows:

	Previous Rates	Application
So. Hills, Hill'nDales, Woodhaven, Center Point, Verde Park, Rocky Creek, Platten Creek, Heritage Park, Cedar Springs		
5/8 in. or 3/4 in.	$ 26.00	$ 30.00
1 in.	65.00	75.00
1 1/2 in.	130.00	150.00
2 in.	208.00	240.00
3 in.	390.00	450.00
Gallonage Charge		
For each add. 1000 gallons up to 10000	$ 4.00	For each add. 1000 gallons up to 10000 $ 4.00
Over 10,001 Gallons	$ 6.00	Over 10,001 Gallons $ 6.00
Oak Ridge Estates		
5/8 in. or 3/4 in.	$ 34.00	$ 30.00
1 in.		75.00
1 1/2 in.		150.00
2 in.		240.00
3 in.		450.00
Gallonage Charge		
For each add. 1000 gallons over 2,000 gallons	$ 2.00	For ea. add. 1000 gallons up to 10000 $4.00
		Over 10,001 Gallons $6.00
Westwood Park		
5/8 in. or 3/4 in.	$ 28.20	$ 30.00
1 in	47.09	75.00
1 1/2 in.	93.91	150.00
2 in.	150.31	240.00
3 in.		450.00
Gallonage Charge		
For each 1,000 over 2,000 gallons	$ 1.60	For ea. add. 1000 gallons up to 10000 $ 4.00
Over 10,001 gallons	$ 00	Over 10,001 Gallons $ 6.00

28. On December 20, 2008, WWW began charging the rates in its application.

29. The rates at issue in this proceeding are still in effect.

General Concerns with WWW's Application

30. Along with the February 4, 2010 prefiled testimony of R. Charles Wiedenfeld, WWW owner and president, WWW amended its application.

31. The amended application contained changes, not just corrections, to the numbers supporting the rate change request and also contained multiple discrepancies in the schedules supporting the application.

32. The amended application did not change the proposed rates.

33. WWW failed to include documentation in support of the revisions found in the amended application, which hindered the parties' ability to analyze the application.

34. The ED's analysis is based on the original application.

Consolidation

35. WWW grouped 12 water systems together to develop one revenue requirement. For test year 2007, WWW's claimed revenue requirement for all 12 systems combined was $481,169 as shown in the September 12, 2008 application.

36. All WWW systems are dependent upon groundwater and are substantially located within the same area, mostly in Kerr County, Texas.

37. The three systems that do not currently have the same rates, Oak Ridge Estates, Westwood Park, and Windwood Oaks, are located within seven miles of one another. WWW has a business office in Center Point, Texas, through which all customer service, billing, accounting, and clerical operations are performed. WWW has two full-time

licensed operators, David Jones and Mr. Wiedenfeld, and an office worker, which serves all systems.

38. WWW had only one general ledger showing the expenses for all 13 systems (including Vista Hills).

Operation and Maintenance Expenses
Salary Expenses

39. In its application, WWW claimed that its salary expense was $110,153 for all water systems combined, including Vista Hills, which is not subject to this rate change.

40. WWW did not demonstrate that the $110,153 in salary expenses claimed in its application was an allowable expense that was reasonable and necessary to provide water service.

41. The ED demonstrated that WWW's salary expense totaled $80,153 for the 12 systems.

Contract Labor

42. In its application, WWW requested $2,250 for contract labor. WWW also demonstrated that $12,133 for temporary employee pay should be reclassified to contract labor from salary expenses.

43. The ED allocated 1.7%, $244, for the Vista Hills water system.

44. WWW demonstrated $14,139 for contract labor reasonable and necessary to provide water service.

Chemicals

45. In its application, WWW requested $7,825 as a chemical expense for the 13 systems combined.

46. The ED allocated 1.7%, $133, for the Vista Hills water system.

47. WWW demonstrated $7,692 for chemical expenses reasonable and necessary to provide water service.

Utilities

48. In its application, WWW requested $30,473 in utility expenses for the 12 water systems.

49. The ED subtracted $950 in utility expenses attributable to Vista Hills.

50. WWW demonstrated $29,523 for utilities expenses reasonable and necessary to provide water service.

Repairs/Maintenance/Supplies

51. In its application, WWW listed $50,338, as an allowable expense for repairs, maintenance, and supplies for all 12 water systems.

52. The ED properly moved $10,000 in vehicle expenses from the miscellaneous expenses category to the repair, maintenance, and supplies category and added $1,910 in documented vehicle expenses.

53. The ED properly allocated 1.7%, $848, to the Vista Hills water system.

54. Applicant incurred $8,164 in lab fees.

55. It is proper to allocate 1.7% of $8,164 or $139 in lab fees to the Vista Hills system.

56. WWW demonstrated that the amount of $57,068 for the expense of repairs, maintenance, and supplies is an allowable expense that is reasonable and necessary to provide water service.

Office Expense

57. WWW included the amount of $3,676 as an office expense in its application.

58. Income was improperly deducted from office expenses; therefore, the ED added $3,300 to this category and subtracted 1.7% from the subtotal or $119 for the Vista Hills system.

59. The ED demonstrated an amount of $6,857 as office expense is reasonable and necessary for WWW to provide water service.

Accounting and Legal Fees

60. In its application, WWW represented that it incurred $3,185 as an allowable expense for accounting and legal fees.

61. The ED reclassified fees for license and permits to miscellaneous expenses and allocated 1.7%, $19, to the vista Hills system.

62. The ED demonstrated $1,116 for the expense of accounting and legal fees is reasonable and necessary for WWW to provide water service.

Insurance

63. In its application, WWW indicated an amount of $3,420 as an allowable expense for insurance.

64. The ED allocated 1.7%, $58, for the Vista Hills water system.

65. WWW demonstrated that the amount of $3,362 as an insurance expense is an allowable expense that is reasonable and necessary to provide water service.

Rate Case Expense

66. In its application, WWW claimed $22,380 for rate case expenses.

67. WWW's just and reasonable rates demonstrated in this hearing are less than 51 percent of the increase in revenue that would have been generated by WWW's proposed rates.

Miscellaneous Expense

68. In its application, WWW claimed $60,632 in miscellaneous expense but WWW now seeks $12,344 in miscellaneous expenses.

69. The ED's additions and deductions to this category are reasonable.

70. The ED demonstrated that the amount of $4,394 for miscellaneous expense is reasonable and necessary for WWW to provide water service.

Payroll Taxes

71. In its application, WWW claimed $1,191 in expenses for payroll taxes.

72. The ED's calculations and deductions to this category are reasonable, resulting in a total of $7,014 for payroll taxes reasonable and necessary for WWW to provide water service.

Property and Other Taxes

73. WWW claimed $16,379 in property and other taxes.

74. The ED allocated 1.7% of that amount, $278, to the Vista Hills system.

75. WWW demonstrated that the amount of $16,101 for property and other tax expenses is an allowable expense that is reasonable and necessary to provide water service.

Federal Income Taxes

76. As set out in the application, WWW calculated an income tax expense of $26,566.

77. Since WWW did not properly calculate its total invested capital, its ROR, and its return, WWW did not properly calculate its federal income tax expense.

Annual Depreciation and Amortization

78. WWW calculated its annual depreciation expense for all 12 water systems combined.

79. In the depreciation schedule included in its application, WWW listed the amount of $61,975 as an annual depreciation expense.

80. WWW failed to provide sufficient documentation to support its depreciation schedule and the amount of its depreciation expense in its application.

81. WWW failed to demonstrate that the amount of $61,975 for annual depreciation is an allowable expense that is reasonable and necessary to provide water service.

Invested Capital, Rate of Return, and Return

82. To determine its invested capital for all 12 systems combined, WWW showed on its application a net book value of $1,060,348, working cash allowance of $33,994, and materials and supplies of $2,000. WWW showed $0 for developer contributions.

83. To calculate its weighted average rate of return (ROR), WWW used one worksheet for all 12 water systems combined.

84. WWW erroneously calculated a weighted average ROR of 9.4 %.

85. In determining its weighted average cost of debt, WWW included loans from its owner, R. Charles Wiedenfeld, and from WW&W Consulting, a sole proprietorship owned by Mr. Wiedenfeld. WWW claimed an interest rate of 10 percent on these loans and used this 10 percent interest to calculate its weighted rate of return.

86. WW&W Consulting and Mr. Wiedenfeld are affiliated interests of WWW.

87. In calculating just and reasonable rates, 10 percent is not an appropriate interest rate for a loan from an affiliated interest because a loan between affiliated interests is not an arm's length transaction.

88. WWW did not demonstrate that the 10 percent interest rate paid to its affiliated interest was reasonable and necessary.

89. Based on errors in calculating its ROR, its weighted average costs of debt and equity, WWW erroneously calculated its return.

90. WWW's reasonable and necessary ROR is 9.48 percent on equity, and it reasonable and necessary weighted average ROR is 8.43%.

Return

91. Since WWW did not properly calculate its total invested income and its ROR, WWW did not properly calculate the amount of its return.

Conservation Rates

92. WWW currently charges its proposed conservation rates to all of its systems except Westwood and Oak Ridge Estates.

93. It is reasonable to allow WWW to charge Westwood and Oak Ridge Estates the proposed conservation rates because: (a) those rates have been previously approved for a majority of WWW's systems; (b) they are not based on the utility's revenue requirement; (c) the rates are not increasing; and (d) they are used solely to promote water conservation.

Rate Design

94. WWW did not demonstrate whether the revenue from its proposed rates would fail to meet, meet, or exceed its revenue requirement.

95. The ED calculated a base rate of $23.12 per month for a 5/8 inch meter including zero gallons and a gallonage rate of $3.22 per 1,000 gallons.

96. A comparison of the ED's calculated base rate with the WWW proposed rate indicates that WWW is unable to support its requested rates.

97. The ED's calculated base rate is lower than the WWW current rate for 598 of 753 connections.

Financial Integrity

98. WWW is not at risk of a financial collapse if this application to change its rates is denied.

Refunds

99. WWW collected the proposed rates from December 20, 2008, until present.

100. It is reasonable to apply 0.28%, the interest rate adopted by the Public Utility Commission of Texas for the year 2011, to the refund amount owed by WWW.

Miscellaneous Fees

101. WWW demonstrated that miscellaneous fees, such as deposits and return check charges, for all 12 systems are reasonable.

Transcription Costs

102. WWW was required to pay the cost of recording and transcription subject to an allocation of those costs among all the parties at the end of the case.

103. Westwood, OPIC, and the ED benefited from the use of a transcript.

104. WWW did not request that the reporting and transcription costs be allocated among the other parties.

105. No party presented evidence or argument on the issue of assessment of reporting and transcription costs.

106. The assessment of the reporting and transcription costs is not an issue in this case.

CONCLUSIONS OF LAW

Procedural History and Jurisdiction

1. WWW is a retail public utility. TEX. WATER CODE ANN. § 13.002(19).

2. WWW is a water utility. TEX. WATER CODE ANN. § 13.002(23).

3. The Commission has jurisdiction to consider an application for a rate increase filed by a water utility. TEX. WATER CODE ANN. § 13.042(e).

4. All required notices of the application and the contested case hearing on it were given as required by law. TEX. WATER CODE ANN. § 13.187; TEX. GOV'T CODE ANN. §§ 2001.051 & 2001.052.

5. The ALJ conducted a contested case hearing and proposed a decision on the application under the authority of chapter 2003 of the Texas Government Code and chapter 13 of the Texas Water Code.

Multiple Systems Consolidated Under One Tariff

6. "Every utility is required to file tariffs showing all rates that are subject to the jurisdiction of the regulatory authority." The utility's rules and regulations are part of the tariff. TEX. WATER CODE ANN. § 13.136(a).

7. The TCEQ defines tariff as "[t]he schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class." 30 TEX. ADMIN. CODE § 291.3(48).

8. Before multiple systems can be consolidated under a single tariff or rate design, a utility must meet certain conditions. "A utility may consolidate its tariff and rate design for

more than one system if: the systems included in the tariff are substantially similar in terms of facilities, quality of service, and cost of service; and the tariff provides for rates that promote water conservation for single-family residences and landscape irrigation." 30 TEX. ADMIN. CODE § 291.21(m); *see also* TEX. WATER CODE ANN. § 13.145(a).

9. WWW has the burden of proving that its proposed rates are just and reasonable. TEX. WATER CODE ANN. § 13.184(c).

Return

10. The Commission, in setting the rates for water service, must fix a utility's overall revenues at a level that will permit the utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses and preserve the financial integrity of the utility. TEX. WATER CODE ANN. § 13.183.

11. The Commission is generally prohibited from setting rates that would allow WWW to earn more than a fair return on its capital that is used and useful in providing water service. TEX. WATER CODE ANN. § 13.184(a).

12. The Commission may promulgate reasonable rules with respect to the allowance or disallowance of certain expenses for ratemaking purposes. TEX. WATER CODE ANN. § 13.185(g).

13. Rates are based on a utility's cost of rendering service. The two components of cost of service are allowable expenses and return on invested capital. Only those expenses that are reasonable and necessary to provide service to the ratepayers may be included in allowable expenses. In computing a utility's allowable expenses, only the utility's

historical test year expenses as adjusted for known and measurable changes may be considered. 30 TEX. ADMIN. CODE § 291.31(a) & (b).

14. "Test year" means the most recent 12-month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing. TEX. WATER CODE ANN. § 13.002(22).

15. Utility rates shall be based on the original cost of property used by and useful to the utility in providing service, including, if necessary to the financial integrity of the utility, construction work in progress at cost as recorded on the books of the utility. Utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in invested capital. TEX. WATER CODE ANN. § 13.185(b).

16. Depreciation on all currently used and useful developer or governmental entity contributed property shall be allowed in the cost of service. Depreciation expense included in the cost of service includes depreciation on all currently used, depreciable utility property owned by the utility, except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. TEX. WATER CODE ANN. § 13.185(j).

17. The rate of return is applied to the invested capital, also referred to as rate base. 30 TEX. ADMIN. CODE § 291.31(c)(2). Components to be included in determining the rate base are as follows:

    (A) original cost, less accumulated depreciation, of utility plant, property, and equipment used by and useful to the utility in providing service:

(i) original cost is the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it was dedicated to public use, whether by the utility that is the present owner or by a predecessor;

(ii) reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation must be computed on a straight line basis over the expected useful life of the item or facility;

(iii) the original cost of plant, property, and equipment acquired from an affiliated interest may not be included in invested capital except as provided in TWC, § 13.185(e);

(iv) utility property funded by explicit customer agreements or customer contributions in aid of construction such as surcharges may not be included in original cost or invested capital; and

(B) working capital allowance to be composed of, but not limited to, the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;

(ii) reasonable prepayments for operating expenses (prepayments to affiliated interests) are subject to the standards set forth in TWC, § 13.185(e); and

(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments (operations and maintenance expense does not include depreciation, other taxes, or federal income taxes).

18. In determining the return on investment that would be reasonable, the Commission must consider several factors. Those include the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management. TEX. WATER CODE ANN. § 13.184 (b).

19. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense may not be allowed either as capital cost or as an expense except to the extent that the regulatory authority finds that payment is reasonable and necessary. TEX. WATER CODE ANN. § 13.185(e).

20. Based on the above Findings of Fact, WWW did not meet its burden of proving that the interest expense on the loans from its affiliates, WW&W Consulting and R. Charles Wiedenfeld, are reasonable and necessary.

21. Under 30 TEX. ADMIN. CODE § 291.31(c)(1), the return on invested capital is the rate of return multiplied by invested capital. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital. The Commission fixes the rate of return in accordance with the following principles:

> (A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.
>
> (B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other relevant conditions and practices.
>
> (C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

22. Based on the above Findings of Fact, WWW failed to meet its burden of proving that its calculations regarding total invested capital, rate of return, and return comply with the TCEQ's rules.

Revenue Requirement

23. Under 30 TEX. ADMIN. CODE § 291.31(b)(1), allowable expenses, to the extent they are reasonable and necessary, and subject to that section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense are not allowed as an expense for cost of service except as provided in Texas Water Code (TWC), §13.185(e));

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset as approved by the commission. Depreciation is allowed on all currently used depreciable utility property owned by the utility except for property provided by explicit customer agreements or funded by customer contributions in aid of construction. Depreciation on all currently used and useful developer or governmental entity contributed property is allowed in the cost of service;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis (federal income taxes must be computed according to the provisions of TWC, § 13.185(f), if applicable);

(E) reasonable expenditures for ordinary advertising, contributions, and donations; and

(F) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

24. Certain types of expenses are not allowed as a component of cost of service, such as those expenditures found by the Commission to be unreasonable or unnecessary,

including civil penalties or fines. TEX. WATER CODE ANN. § 13.185(h)(3); 30 TEX. ADMIN. CODE § 291.31(b)(2)(I).

25. Based on the above Findings of Fact, WWW failed to meet its burden of proving that the total of its claimed allowable expenses is reasonable and necessary to provide water service.

Rate Design

29. The Commission has adopted rules concerning alternative rate methods. 30 TEX. ADMIN. CODE § 291.34. To ensure that retail customers receive a higher quality, more affordable, or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the Commission may utilize alternate methods of establishing rates. The Commission shall assure that rates, operations, and service are just and reasonable to the consumers and to the utilities.

30. There is no evidence that any portion of the proposed rate increase is necessary to preserve WWW's financial integrity.

31. Based on the above Findings of Fact and Conclusions of Law, WWW has failed to meet its burden of proving that its application should be granted. WWW has failed to meet its burden of proving that its proposed rates are just and reasonable.

32. Based on the above Findings of Fact and Conclusions of Law, WWW's application for a change in its water utility rates should be denied.

Rate Case Expenses

33. Regarding rate case expenses, 30 TEX. ADMIN. CODE § 291.28(7) and (8) provide:

(7) A utility may recover rate case expenses, including attorney fees, incurred as a result of a rate change application only if the expenses are reasonable, necessary, and in the public interest.

(8) 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% of the increase in revenue that would have been generated by a utility's proposed rate.

34. Based on the above Findings of Fact and Conclusions of Law, WWW has failed to demonstrate that its rates should be increased. Therefore, in accordance with 30 TEX. ADMIN. CODE § 291.28(7) and (8), WWW should not be allowed to recover any rate case expenses for this case.

35. Based on the above Findings of Fact and Conclusions of Law, WWW's rates should revert back to those in effect before the filing of its application to change WWW's water rates.

Refund

36. "Unless otherwise agreed to by the parties to the rate proceeding, the utility shall refund or credit against future bills all sums collected during the pendency of the rate proceeding in excess of the rate finally ordered plus interest as determined by the [Commission]." TEX. WATER CODE ANN. § 13.187(i).

37. Based on the above Findings of Fact and Conclusions of Law, WWW should refund or credit to its customers all sums collected since December 20, 2008, which was the effective date of the rates at issue in this case, that exceed the rates approved by the Commission in this case, plus 0.28% percent interest on the over-collection.

Transcription Costs

38. The Commission will consider the following factors in allocating reporting and transcription costs among the parties, according to 30 TEX. ADMIN. CODE § 80.23(d)(1):

> (1) Upon the timely filed motion of a party or upon its own motion, the commission may assess reporting and transcription costs to one or more of the parties participating in the proceeding. The commission shall consider the following factors in assessing reporting and transcription costs:
>
> (A) the party who requested the transcript;
>
> (B) the financial ability of the party to pay the costs;
>
> (C) the extent to which the party participated in the hearing;
>
> (D) the relative benefits to the various parties of having a transcript;
>
> (E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;
>
> (F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and
>
> (G) any other factor which is relevant to a just and reasonable assessment of costs.

39. The Public Interest Counsel may not appeal a ruling, decision, or other act of the Commission. TEX. WATER CODE ANN. § 5.275.

40. The Executive Director may not appeal a ruling, order, or other act of the Commission. TEX. WATER CODE ANN. § 5.356.

41. The Commission may not assess reporting or transcription costs to the Public Interest Counsel and the ED who, as statutory parties, are precluded by law from appealing any ruling, decision, or other act of the Commission. 30 TEX. ADMIN. CODE § 80.23(d)(2).

42. Based on the above Findings of Fact and Conclusions of Law, WWW should be assessed the full amount of the reporting and transcription costs.

III. ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. The application of Wiedenfeld Water Works, Inc. to increase the rates that it charges for the retail water utility service that it provides under Certificate of Convenience and Necessity No. 12052 in Kerr, Kendall, and Medina Counties, is denied. 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.
2. WWW shall immediately cease collecting the rates it proposed in this case.
3. Over twenty-one months for the Cedar Springs, Center Point, Heritage Park, Hills 'n Dales, Platten Creek, Rocky Creek, Southern Hills, Verde Park, and Woodhaven systems and over seventeen months for the Oak Ridge Estates and Westwood Park systems, WWW shall refund or credit to customers all sums collected between December 20, 2008, and the present, that exceed the rates approved by the Commission in this case, plus 0.28% percent interest on the over-collection.
4. WWW shall be assessed the full amount of the reporting and transcription costs.
5. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
6. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and Texas Government Code § 2001.144.

7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

8. The Commission's Chief Clerk shall forward a copy of this Order to each party.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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Bryan W. Shaw, Ph.D., Chairman
For the Commission